Calendar No. 678

84TH CONGRESS, 1st Session | SENATE | REPORT No. 673

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HAL A. MARCHANT

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1154]

The Committee on the Judiciary, to which was referred the bill (S. 1154) for the relief of Hal A. Marchant, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to waive any limitations on the right to employ the tug *Jenny* in the coastwise trade by reason of a sale foreign prior to its purchase by Hal A. Marchant. Section 27 of the 1920 act exludes from use in the coastwise trade of the United States any vessel once owned by a person who is not a citizen of the United States.

STATEMENT

The facts relating to this bill are fully set forth in the attached letters from the Secretary of Commerce and the Secretary of the Treasury, respectively, which were submitted to the committee in connection with a similar bill of the 83d Congress.

THE SECRETARY OF COMMERCE,
Washington, D. C., January 11, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in reply to your request of July 15, 1953, for the views of this Department with respect to S. 2335, a bill for the relief of Hal A. Marchant.

The bill would waive any limitations on the right to employ the tug *Jenny* in the coastwise trade by reason of a sale foreign prior to its purchase by Hal A.

Marchant. Section 27 of the 1920 act excludes from use in the coastwise trade of the United States any vessel once owned by a person who is not a citizen of the United States.

From the records of the Department, it appears that in February 1952, an application was received from Warren L. Harter, doing business as Harter Lumber Co., Spokane, Wash., for approval under sections 9 and 37 of the Shipping Act, 1916, as amended, of the proposed sale of the sea mule tug (model 5–B) *Jenny* to a Canadian citizen and transfer of the vessel to Canadian registry and flag. Prior to action on the application, the Department was advised by report from the collector of customs at Seattle, Wash., that the sale of the tug *Jenny* to the Canadian citizen had already been made. A violation of sections 9 and 37 of the 1916 act, as amended, thus being indicated, the matter was referred to the Attorney General for action. Subsequently, the Department of Commerce was advised by the Assistant Attorney General that the sum of $225 had been accepted as a penalty for the violation. The Harter Lumber Co. was thereupon advised (August 8, 1952) by this Department that an application to sell the tug as previously proposed would be considered, but the matter was not followed up by the said company.

It is our understanding that the tug has not been placed under foreign registry or flag, that it has not left United States waters, and that the present purchaser is a citizen who desires to use the vessel in coastwise operations. Although the possible forfeiture of the vessel for violation of law in selling the vessel foreign without approval of this Department was mitigated with acceptance of a monetary penalty, the law expressly prohibits admission of the tug to coastwise operation after sale thereof to a foreign citizen (first proviso of sec. 27 of the Merchant Marine Act, 1920).

Under the circumstances, the bill is a matter of legislative policy or discretion for the Congress in waiving, in this particular case, a legal prohibition which supports the general congressional policy limiting coastwise shipping to vessels built in and owned by citizens of the United States (sec. 27 of the 1920 act). While it appears that there are a substantial number of similar cases, we do not believe that general legislation should be enacted to waive the restriction on employment in coastwise trade in these cases, but that each case of this character should be given individual congressional consideration. We do not believe that enactment of S. 2335 would be particularly prejudicial to the existing coastwise shipping.

For these reasons, this Department would interpose no objection to the enactment of S. 2335.

We have been advised by the Bureau of the Budget that it would interpose no objection to the submission of this letter.

If we can be of further assistance in this matter, please call on us.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

TREASURY DEPARTMENT,
Washington, January 11, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of July 15, 1953, requesting a statement of this Department's views on the bill for the relief of Hal A. Marchant, S. 2335.

The proposed legislation would in effect permit Mr. Marchant to document the vessel *Jenny*, apparently the gas screw vessel of that name, official No. 256330, for use in the transportation of merchandise and passengers between points in the United States embraced within the coastwise laws, notwithstanding the fact that it has been owned by a citizen of Canada.

The statutory limitation contained in the first proviso of section 27, Merchant Marine Act, 1920, as amended (46 U. S. C. 883), which the bill seeks to overcome, is applicable without regard to duration of foreign ownership or use of the vessel during that period. If enacted, therefore, the bill would confer upon Mr. Marchant a privilege not available to other citizens. Whether such an exception should be enacted is a matter of legislative policy on which this Department expresses no opinion.

If the bill is given favorable consideration, your committee may wish to consider the fact that as drafted it does not positively identify the vessel by official number. Furthermore, there is considerable question whether the present language would

exempt any subsequent purchaser from the statutory restriction upon the vessel's use. There is attached a memorandum setting forth suggested substitute language.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

MEMORANDUM ACCOMPANYING THE REPORT ON S. 2335

It is suggested that the bill S. 2335 be amended by striking all after the enacting clause and inserting in lieu thereof the following:

"That notwithstanding the provisions of section 27 of the Merchant Marine Act, 1920, as amended, the Secretary of the Treasury is authorized and directed to cause the gas screw vessel *Jenny*, official number 256330, now owned by Hal A. Marchant, of Coulee Dam, Wash., to be documented as a vessel of the United States with full coastwise privileges, upon compliance with the usual requirements for documentation, so long as the vessel is owned, and shall continue to be owned, by a citizen of the United States and the said vessel *Jenny* shall be deemed to be entitled to engage in such trade so long as it is so documented."

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Calendar No. 679

84TH CONGRESS, 1st Session | SENATE | REPORT No. 674

JOSEPHINE RAY

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1220]

The Committee on the Judiciary, to which was referred the bill (S. 1220) for the relief of Josephine Ray, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to have Mrs. Josephine Ray, of Long Beach, Calif., considered to have been lawfully married to William Thomas Ray during the period from December 16, 1925, to October 7, 1948, insofar as any laws conferring rights, privileges, or benefits upon the widows of veterans of World War I are concerned.

STATEMENT

William Thomas Ray, an honorably discharged veteran of World War I, died on May 11, 1953. He was originally married to one Lou L. Fleming on September 30, 1911. Thereafter, on December 16, 1925, he entered into another marriage with Josephine Hess Ray, in the belief that his first wife had secured a divorce from him.

Josephine Hess Ray and William Thomas Ray lived together from the date of their marriage until the date of his death in 1953. In the meantime, however, Mr. Ray discovered that his first marriage had not, in fact, been dissolved. He immediately took steps to secure a divorce from his first wife, and a final judgment of divorce was granted to her on June 17, 1946. Thereafter, the veteran and Josephine Hess Ray went through a second marriage ceremony on October 7, 1948. The reason for the delay between the granting of the final judgment of divorce from the first wife and the time of the second marriage cere-

mony is set forth below in a letter addressed by Mrs. Ray to Senator Knowland under date of April 15, 1955, in which she states:

> Mr. Ray became seriously ill during the time the divorce proceedings were in process and it became necessary for him to be hospitalized, as well as private doctors care, in order to gain his normal physical condition; these conditions made it imperative that we wait until he was physically able to properly provide for his home and assume his proper position as a family man.

Section 3 of the act of May 13, 1938 (52 Stat. 353), as amended (38 U. S. C. 505 (a)), provides that for the purpose of payment of compensation or pension under laws administered by the Veterans' Administration, the term "widow of a World War I veteran" shall mean a woman who was married prior to December 14, 1944, or 10 or more years, to the person who served. Mrs. Ray, therefore, because of the quirk of circumstances, is not eligible for payment of such pension because her valid marriage was not contracted until October 1948 and her husband died on May 11, 1953.

The file of the sponsor of the bill contains a number of affidavits submitted by persons who knew Mr. and Mrs. Ray for a period extending over 25 years and who state that there is no question about their belief that they had originally contracted a valid marriage; that they did, in fact, live together as husband and wife all during that period, and that Mrs. Ray showed great devotion to her husband, especially during his many illnesses, and that as soon as their unfortunate circumstance was discovered, they hastened to correct this deficiency.

The Veterans' Administration opposes the bill in the following language:

> The circumstances of the case have been carefully considered. No reason is apparent why it should be singled out for special legislative treatment. To grant such preferential treatment in this case would be discriminatory against others in the same or similar circumstances, and might form a precedent for similar legislation in other cases.

The committee cannot agree with the position taken by the Veterans' Administration, although it is commendable that they insist upon enforcement of the general law. However, the committee cannot conceive of another case arising out of the same or similar circumstances, or based upon the same set of facts and, therefore, concludes that this case is unique and that this widow, now in her middle sixties, who lived with the deceased veteran for over 25 years, should be entitled to the relief sought in the bill.

Attached hereto for the information of the Senate is the above-referred-to letter from the Veterans' Administration as well as that addressed by Mrs. Ray to Senator Knowland.

VETERANS' ADMINISTRATION,
Washington, D. C., March 24, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR KILGORE: This has further reference to your request for a report by the Veterans' Administration on S. 1220, 84th Congress, a bill for the relief of Josephine Ray, which provides as follows:

"That, for the purposes of any laws conferring rights, privileges, or benefits upon widows of veterans of World War I, Josephine Ray, of Long Beach, Calif., shall be held and considered to have been lawfully married to William Thomas Ray (deceased, XC-1932111), a veteran of World War I, during the period from December 16, 1925, to October 7, 1948, the latter date being the date upon which the marriage between the said Josephine and William Thomas Ray was legally

consummated, after the said persons discovered that the original marriage contract between them on December 16, 1925, was invalid.

"SEC. 2. The said Josephine Ray shall be entitled to any benefits she becomes entitled to by reason of the enactment of this act as of the date of the death of her husband, William Thomas Ray."

William Thomas Ray, XC–1932111, an honorably discharged veteran of World War I, died on May 11, 1953. The veteran and one Lou L. Fleming were married on September 30, 1911. When the veteran and the claimant, Josephine Hess Ray, subsequently went through a ceremonial marriage on December 16, 1925, his prior marriage had not been dissolved. An interlocutory judgment of divorce from the veteran was granted to Lou L. Ray on June 8, 1945, and a final judgment of divorce was granted her on June 17, 1946. Thereafter, the veteran and Josephine Hess Ray went through a second marriage ceremony on October 7, 1948.

The claim of Josephine Ray for death compensation or pension, filed on June 9, 1953, was denied on the ground that she was not legally married prior to December 14, 1944, or 10 or more years, to the person who served, which is a condition precedent to entitlement to either benefit under the law. On the basis that the veteran's prior marriage to Lou on September 30, 1911, had not then been dissolved, it was determined that his ceremonial marriage to the claimant on December 16, 1925, was invalid and could not be accepted for purposes of death compensation or pension benefits under laws administered by the Veterans' Administration. By letter dated June 12, 1953, she was advised of this action and of her right to appeal to the Administrator of Veterans' Affairs within 1 year from the date of that letter. There is no record that such an appeal was filed.

Section 3 of the act of May 13, 1938 (52 Stat. 353), as amended (38 U. S. C. 505 (a)), provides that for the purpose of payment of compensation or pension under laws administered by the Veterans' Administration, the term "widow of a World War I veteran" shall mean a woman who was married prior to December 14, 1944, or 10 or more years, to the person who served, provided that all marriages shall be proven as valid marriages according to the law of the place where the parties resided at the time of marriage or the law of the place where the parties resided when the right to compensation or pension accrued. A marriage may not be recognized as valid until it is shown that prior marriages have been dissolved. Other factors, such as good faith or the length of cohabitation between the veteran and the claimant do not alter the invalidity of their ceremonial marriage of December 16, 1925, and do not permit the Veterans' Administration to ignore the provisions of law which require that a claimant establish that she meets the statutory definition of widow before payment of death compensation or pension may be authorized.

It may be noted that denial of death compensation or pension to Josephine Ray is not determinative of her marital status except as it may affect her claim for those benefits under laws administered by the Veterans' Administration based on the military service of the veteran. In fact, she was determined by the Veterans' Administration to be the veteran's widow, by virtue of her marriage to him on October 7, 1948, for purposes of payment of accrued disability compensation which had been due the veteran but remained unpaid upon his death.

S. 1220, if enacted, would be a conclusive determination by legislative action that for the purpose of any laws conferring the rights, privileges, or benefits upon widows of veterans of World War I, Josephine Ray shall be held and considered to have been lawfully married to the veteran from December 16, 1925. It is not known what effect, if any, the enactment of this bill would have with respect to the claimant's eligibility for benefits under laws administered by Federal agencies other than the Veterans' Administration. Insofar as laws administered by the Veterans' Administration are concerned, it appears that enactment of the bill would render Mrs. Ray potentially eligible to payment of either service-connected death compensation of $87 monthly or non-service-connected death pension of $50.40 monthly. Before any payment could be authorized, of course, it would be necessary for the Veterans' Administration to determine whether the claimant meets all requirements of governing laws other than the requirement which would be satisfied by S. 1220, if enacted. The bill, however, should be clarified as to whether or not it is intended that such determination be made on the basis of a new application to be filed by Mrs. Ray subsequent to enactment. It will be recalled in this connection that her application of June 9, 1953, has been finally disallowed.

Section 2 of the bill is ambiguous. Presumably it is intended to permit retroactive payments under governing public laws only if, during the period in question, Mrs. Ray meets all requirements of such laws except the one relating to the definition of a widow. However, clarification is indicated.

Attention is invited to section 131 of the Legislative Reorganization Act of 1946 (60 Stat. 831), which provides in pertinent part as follows:

"No private bill or resolution (including so-called omnibus claims or pension bills), and no amendment to any bill or resolution, authorizing or directing (1) the payment of money * * * for a pension * * * shall be received or considered in either the Senate or House of Representatives."

There appears to be for consideration the question as to whether S. 1220 is consistent with the congressional policy expressed in the quoted section.

The circumstances of the case have been carefully considered. No reason is apparent why it should be singled out for special legislative treatment. To grant such preferential treatment in this case would be discriminatory against others in the same or similar circumstances, and might form a precedent for similar legislation in other cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice was received from the Bureau of the Budget with respect to a similar report on a similar bill (H. R. 2935), that there would be no objection to the submission of the report to the committee.

Sincerely yours,

JOHN S. PATTERSON,
Deputy Administrator
(For and in the absence of the Administrator).

APRIL 15, 1955.

Re Mrs. Josephine Ray, Long Beach, Calif.

Hon. WILLIAM F. KNOWLAND,
United States Senate, Washington, D. C.

MY DEAR SENATOR: In reply to your letter of April 8, 1955, the reason for the nonconsummation of our second marriage was for the following reasons.

Mr. Ray became seriously ill during the time the divorce proceedings were in process and it became necessary for him to be hospitalized as well as private doctors care in order to gain his normal physical condition; these conditions made it imperative that we wait until he was physically able to properly provide for his home and assume his proper position as a family man.

Very respectfully,

Mrs. JOSEPHINE RAY.

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Calendar No. 680

84TH CONGRESS
1st Session

REPORT
No. 675

DR. LOUIS J. SEBILLE

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 989]

The Committee on the Judiciary, to which was referred the bill (H. R. 989) for the relief of Dr. Louis J. Sebille, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Dr. Louis J. Sebille (lieutenant, United States Naval Reserve, retired 426735), of Pontiac, Mich., of all liability to refund to the United States the sum of $470.10, representing alleged net overpayments in active-duty pay and allowances made to him by the Department of the Navy for the period beginning January 25, 1945, and ending October 31, 1946.

STATEMENT

The facts relative to this claim are contained in House Report No. 94, to accompany H. R. 989, and are as follows:

[H. Rept. No. 178, 83d Cong., 1st sess.]

STATEMENT

H. R. 710 simply provides for the relief of liability to the United States in the sum of $876.10, which represents alleged overpayments to the claimant, Dr. Louis J. Sebille, which overpayments were made by the Department of the Navy for the period beginning August 1, 1946, and ending October 31, 1946.

The facts of the matter are that this fellow was in the First World War, and about 1916 he was in the enlisted corps of the United States Army Reserve, and that continued for 3 or 4 years; then he somehow got out of it.

Then along came World War II, and he accepted a commission in the Navy. The Navy, in computing his pay, figured in the time in the Army Reserve back

in World War I, but they were confused in their figures as to how long he had been in, and finally they decided he had not been in as long as they had thought. So, they overpaid him for pay and rental allowance and subsistence allowances for this period of a year of about $800.

The bill calls for $800. Actually, the Navy says that, while he was overpaid for that period of time, he was underpaid a certain portion of the time. Therefore, the Navy claims that he does not owe them $800; that he only owes them $470.10.

The point is the doctor is completely disabled. He has one eye out, and he is 67 or 68 years old, and the only income he has for both himself and his wife is a complete-disability allowance from the Navy.

He only gets $187 a month, on which he has to live and keep his wife. He can't practice. He has almost no eyesight at all. This simply relieves him of the debt, which it would be almost impossible for him to pay.

Therefore, the bill is amended to conform to the amount as stated in the report from the Department of the Navy, as being $470.10, and favorable consideration is recommended.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., October 29, 1951.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: The bill (H. R. 4379) for the relief of Dr. Louis J. Sebille, was referred by your committee to the Navy Department with request for a report thereon.

The purpose of the bill is to relieve Lt. Louis J. Sebille, United States Naval Reserve, retired, of all liability to refund to the United States the sum of $876.10, representing overpayments in active-duty pay and allowances made to him from August 1, 1946, to October 31, 1946. It also provides that, in the audit and settlement of the accounts of any certifying or disburing officer of the United States, full credit shall be given for any amount for which liability is relieved by this act.

The records of the Navy Department show that Dr. Sebille applied for appointment in the United States Naval Reserve in September 1944; his application was processed and his appointment as a lieutenant, MC (S), USNR, was issued on January 5, 1945. Lieutenant Sebille was ordered to active duty and reported to the Veterans' Administration facility, Hines, Ill., on January 30, 1945, for duty. He was placed on the retired list on November 1, 1946, having been found by the Naval Retiring Board to be incapacitated for active service by reason of physical disability, and was credited for pay purposes with 7 years, 6 months, and 6 days service; 5 years 9 months from September 2, 1911, to June 1, 1917, being United States Army Reserve service, and 1 year 9 months and 6 days from January 25, 1945, to October 31, 1946, being United States Naval Reserve service.

On August 22, 1946, Lieutenant Sebille certified that he held a commission in the Reserve Corps, United States Army, from August 1911 to January 1945, a period of 33 years 4 months, although a letter dated March 31, 1945, from Lieutenant Sebille to the Chief of Naval Personnel, indicates knowledge of the fact that he had been separated from the Medical Corps Reserve of the Army about August 11, 1916. Also, there is on record a letter from the Army Service Forces, Headquarters, Sixth Service Command, Chicago 6, Ill., dated October 3, 1944. to Louis J. A. Sebille, M. D., Snover, Mich., advising him, in response to a letter from him dated September 15, 1944, that he had no status as an officer in the Medical Corps Reserve. Dr. Sebille's certification, however, was accepted by the disbursing officer under authority of the act of October 26, 1942 (Public Law 758, 77th Cong.) as a basis for adjusting his active-duty pay account as of July 1, and as a result his pay was increased from $253 per month to $412.50 per month; his rental allowance was increased from $90 per month to $105 per month, and his subsistence allowance was increased from $1.40 to $2.10 per day.

As a result of these increases in pay and allowances, during the period July 1, 1946, to October 31, 1946, Dr. Sebille was overpaid $698 in pay and rental allowance and $86.10 in subsistence allowance, a total of 784.10. During the preceding 17-month period, beginning January 25, 1945, Dr. Sebille was underpaid for longevity at the rate of $10 per month from January 25, 1945, through April 24, 1945, and at the rate of $20 per month from April 25, 1945, through June 30, 1946. The total underpayment amounted to $314, which amount is due Dr. Sebille. The net amount of overpayment is thus reduced to $470.10.

In order that the bill may correctly state Dr. Sebille's account, it is recommended that the bill be amended as follows: (1) in line 6, delete "$876.10" and in lieu thereof insert "$470.10"; and in the same line, after "alleged," insert "net"; (2) in line 8, delete "August 1, 1946" and in lieu thereof insert "January 25, 1945".

The Department of the Navy realizes that Dr. Sebille may have some difficulty in repaying the net amount of $470.10 which is due the Government in final settlement of his account if he is in large measure dependent on his retired pay of $189.75 per month. The ability of Dr. Sebille to discharge his debt to the Government is a collateral issue on which the Department of the Navy has no information on which to base an opinion, assuming that it would be appropriate to do so. The facts creating the liability of Dr. Sebille to the United States do not appear to warrant the relief proposed in the bill. Accordingly, the Department of the Navy recommends against enactment of H. R. 4379.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

Sincerely yours,

E. E. WOODS,
Captain, United States Navy,
Acting Judge Advocate General of the Navy
(For the Secretary of the Navy).

STATE OF MICHIGAN,
County of Oakland, ss:

Lt. Louis J. Sebille, Medical Corps, United States Naval Reserve (retired), 5015 Durham Road, Route 18, Pontiac, Mich., being duly sworn according to law before me, a notary public in and for the county of Oakland, this 10th day of March 1950, deposes and says:

I joined the United States Medical Reserve Corps on August 16, 1911. However, I was not called to active duty. On or about October 1944, I applied for official separation in the form of a letter from General Aurand, Sixth Army Command, Chicago, Ill. Unfortunately, this letter has been mislaid and I have been unable to locate same. I requested the release because I wished to join the Medical Corps of the United States Naval Reserve. It was necessary to secure this release before joining the United States Navy. I entered the United States Naval Reserve in good faith and served from January 1945 to November 1, 1946. I was discharged from the United States Navy because of removal of the left eye and poor vision in the right. Since being separated from the Navy, I have been unable to earn a livelihood as a physician or from any other source. In a previous affidavit (March 10, 1950) it was stated that I received my entire income from the Veterans' Administration. This is an incorrect fact, overlooked by me in the reading of said affidavit.

My source of income ($189.75) is supplied by the United States Naval Disbursement Office, Cleveland 14, Ohio, and is retirement disability pay. I have never asked for nor received any aid financially or medically from the Veterans' Administration. In a copy of a letter dated January 24, 1949, it is stated in paragraph 2 that the naval commander was advised September 29, 1944, that a release for active duty with the Naval Reserve was not necessary for Dr. Sebille. Nevertheless, the commanding officer at the naval recruiting station would not induct me into service until such a release was obtained. After much correspondence and delay, I received said release from General Aurand, Sixth Army Command, Chicago, Ill., and sent it to the Detroit Naval Recruiting Office. I was thereafter accepted into service. Unfortunately, I neglected to have a photostatic copy made of that release. My first indication of the alleged debt of $876.10 was received when I was notified that my Army release was not found in my Navy jacket. I accepted the pay status given me by the legal department at Great Lakes as correct, after prolonged interviews, at the time of my separation.

I am unable to pay the amount which is alleged to be due to the United States Navy. Neither does my income permit me to pay this amount in installments. I can barely support my wife and myself on the compensation I am now receiving from the Navy.

It is respectfully requested that this affidavit be considered for the purpose of having the reimbursement of $876.10 waived. It would be an extreme hardship on me to pay this amount even in very small monthly payments.

LOUIS J. SEVILLE, M. D.

[SEAL] RUTH L. GRAFF,
Notary Public, Oakland County, Mich.

My commission expires April 7, 1951.

After a review of the facts as set forth above and the report of the Department of the Navy, the committee believes that in equity and justice this legislation should be favorably considered. While it is not the intention of the committee to relieve parties from responsibilities and liabilities that they justly owe, it would appear that in this case there was confusion within the Department as well as on the part of the claimant which caused the unfortunate situation that exists. Upon this basis and upon the further basis that it would, due to age and disability, work a very severe hardship upon the claimant to insist upon his paying the liability of $470.10 to the Government. The committee, in the interests of fair dealing and equity, recommends H. R. 989 to the Senate for favorable consideration.

Calendar No. 681

84TH CONGRESS
1st Session

SENATE

REPORT
No. 676

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JUL 12 1955

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T. C. ELLIOTT

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2470]

The Committee on the Judiciary, to which was referred the bill (H. R. 2470) for the relief of T. C. Elliott, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay to T. C. Elliott of Daytona Beach, Fla., the sum of $15,000 as an extraordinary monetary award for special services rendered to the United States prior to 1944, in addition to his official duties as a Federal employee, in preparing and furnishing rate and transportation information to Members of the Senate, Members of the House of Representatives, the Committees on Interstate and Foreign Commerce of the Senate and the House of Representatives over an extensive period, which services, in the opinion of those United States Senators and Congressmen in a position to know, effected substantial savings to the Government of the United States.

STATEMENT

Except in two particulars, this bill is identical to S. 1687, 83d Congress, 1st session, which was reported favorably by this committee, August 6, 1954, passed the Senate as reported, August 11, 1954, and passed the House, August 19, 1954. Thereafter, S. 1687 was vetoed by the President, September 2, 1954. Notwithstanding this, however, in his memorandum of disapproval, the President said:

> I shall be glad to approve a bill which is by its terms an extraordinary monetary award for special service and which removes the tax-free status of the award.

Accordingly, S. 102 embraces these two suggestions of the President which were not incorporated in S. 1687, 83d Congress, 1st session.

A verbatim copy of the President's memorandum of disapproval consequently is reprinted herein and made a part of this report, together with certain correspondence attached hereto, and marked as exhibits, which, together with certain oral testimony presented at a hearing before a subcommittee of the Judiciary Committee on June 7, 1953, constitute the available facts pertinent to this claim. These facts may be summarized as follows:

Except for a brief period, this claimant, T. C. Elliott, was an employee of the Federal Government from November 1, 1900, to his retirement, January 31, 1944. During this period of Government employment the claimant served as an auditor in the Navy, Treasury Departments, and in the General Accounting Office (exhibits M and N).

The claimant in the positions just enumerated became conversant with freight rates and transportation problems, and by reason thereof repeatedly furnished data on these subjects to various officials of the executive branch of the Government, Committees of the Senate and House of Representatives, and to individual Senators and Congressmen from 1907 to 1944 (exhibits A, B, C, D, E, F, G, H, J, M, N, O, R, S, and par. 3 of exhibit W).

That this data was recognized as of value by the officials to whom it was submitted is evidenced by letters from the following officials: The President of the United States (exhibit H); the Comptroller General of the United States (exhibit M); the Chairman of the United States Civil Service Commission (exhibit L); Hon. Morris Sheppard, deceased, formerly United States Senator (Texas) and member of the United States Senate Committee on Military Affairs (exhibit G); the following additional Members and ex-Members of the United States Senate: Hon. Spessard L. Holland (Florida), Hon. Tom Connally (Texas); the following Members and ex-Members of the House of Representatives: James W. Trimble (Arkansas), W. R. Poage (Texas), A. S. Herlong, Jr. (Florida), Victor Wickersham (Oklahoma), Brooks Hays (Arkansas), J. Hardin Peterson (Florida) (exhibits A, B, C, D, E, F, K, Q, R, and exhibit J); and the following former associates of the claimant, during his years of Government service: W. E. Hayghe, Chief Procurement, Treasury; O. K. Mohundro, auditor, Treasury; Lyman C. Dalle, associate (exhibits N. O. and S).

That the services rendered by this claimant were instrumental in effecting savings to the Federal Government which ran into the millions of dollars is the opinion of the following Government officials who were acquainted with Mr. Elliott's services during the years he was a Government employee: Hon. Morris Sheppard (deceased), United States Senator (Texas) and a member of the United States Senate Committee on Military Affairs (exhibit G); Hon. Robert Ramspeck, Chairman, United States Civil Service Commission (exhibit L); Hon. Tom Connally, ex-United States Senator (Texas) (exhibit Q); Hon. W. R. Poage, Congressman (Texas) (exhibit C); Hon. A. S. Herlong, Jr., Congressman (Florida) (exhibits D and E); Hon. Lyman C. Dalle, former associate of claimant (exhibit S).

These services were rendered by the claimant, T. C. Elliott at his own expense (exhibit N); voluntarily (exhibit D); on claimant's leave time (exhibit O); and clearly aside from the official duties or the

requirements of the office in which the claimant was employed (exhibits D, F, and M).

In 1946, Congress enacted Public Law 609, chapter 744, section 14 of which permits the head of each department of the Government to pay cash awards to civilian officials and employees who make meritorious suggestions which result in the improvement of their respective departments (exhibits C, D and F). Since the claimant retired in 1944, 2 years before this legislation was enacted he cannot avail himself of the benefits of this legislation. Irrespective of this, however, it is the opinion of the following officials familiar with claimant's services that such services should be recognized financially: Hon. A. S. Herlong, Jr., Congressman (Florida) (exhibits D and E); Hon. W. R. Poage, Congressman (Texas) (exhibit C); Hon. Victor Wickersham, Congressman (Oklahoma) (exhibit F); Hon. Robert Ramspeck, Chairman, United States Civil Service Commission (exhibit L); O. L. Mohundro, associate of claimant (exhibit N); Hon. James W. Trimble, Congressman (Arkansas) (exhibit B).

A careful reading of the exhibits set forth in the above paragraph would indicate that these individuals who were in a position to make a firsthand evaluation of the claimant's services, feel that financial recognition would not be breaking a precedent, but instead would be setting a precedent where services rendered were exceptional to the degree they believe the services rendered by T. C. Elliott to be.

Specifically the services for which this claimant seeks financial recognition through enactment of this bill, fall within the following categories:

I. DATA SUBMITTED AND ORAL TESTIMONY PRESENTED BEFORE SENATE AND HOUSE COMMITTEES PRECEDING ENACTMENT OF SECTION 321 OF THE TRANSPORTATION ACT OF 1940

The railroads land-grant acts required land-grant railroads to provide postal, military, naval, and other governmental transportation services at rates less than the usual charges (par. 2, exhibit H). The railroads naturally wanted the statutory provisions granting these reduced rates on Government traffic repealed (par. 2, exhibit O).

Section 321 of the Transportation Act of 1940, provided that the United States Government should be charged the full commercial rate by any common carrier transporting persons or property for the Government. The act further provided, however, that land-grant railroads must continue to transport Government supplies at reduced rates until such railroads waived all outstanding claims to Government lands or compensation therefor. This law (act of September 18, 1940, 54 Stat. 898) originally was introduced as S. 2009 (par. 2, exhibit G; par. 2 and last paragraph, memorandum, Department of Justice, exhibit R).

Subsequent to enactment of the Treasportation Act of 1940, a settlement was agreed upon between the Government and the railroad in *United States* v. *Northern Pacific Railway* (41 F. Supp. 273) (par. 7, memorandum, Department of Justice, exhibit R). In the opinion of both the Department of the Interior and the Department of Justice, the release of the railway's claim against the Government of the United States for 1,453,061 acres of land under the provisions of the Transportation Act was a factor in this settlement (par. 10, exhibit U, and par. 7, memorandum, Department of Justice, exhibit R). Originally,

the district court had found in this suit that the Northern Pacific Railway was entitled to compensation from the Government of the United States for the 1,453,061 acres of land (par. 5, memorandum, Department of Justice, exhibit R).

As might be expected, legislation of such a far-reaching nature as the Transportation Act of 1940 was preceded by considerable congressional activity relative to its subject matter including the introduction of a series of bills.

The first bill, H. R. 10641, was introduced by Congressman Peterson of Florida, January 27, 1936.

The records of the Department of Justice indicate that at the request of Congressman Peterson, officials of the Department of Justice discussed with the claimant, T. C. Elliott, some 2 months before the introduction of H. R. 10641, a proposed bill identical to the one which Congressman Peterson introduced (par. 8, memorandum, Department of Justice, exhibit R).

H. R. 10641 would have required the Attorney General to keep data and protect the Government's interest in land grant realty (par. 9, memorandum, Department of Justice, exhibit R).

Other bills introduced in Congress preceding enactment of the Transportation Act of 1940, supported by this claimant, T. C. Elliott, were H. R. 1530 and S. 605 in the 75th Congress and S. 2294 in the 76th Congress (par. 10, Department of Justice memorandum, exhibit R). None of these bills were enacted.

A further bill, H. R. 10620 was introduced on May 12, 1938 (75th Cong.). This bill would have removed existing reductions in compensation for transportation of Government property and troops incident to railroad land grants. This claimant, T. C. Elliott opposed this bill on the ground that the Government's equity in the matter was of greater importance than the relief the railroads would receive if the bill became law. The committee reported the bill favorably, but it was not taken up by the House (last paragraph, memorandum, Department of Justice, exhibit R).

On November 14, 1938, some 4 months after hearings on the above H. R. 10620, Senator Sheppard sent to the President of theUnited States a memorandum prepared by this claimant, T. C. Elliott, on the subject of land-grant railroads (last paragraph, memorandum, Department of Justice, exhibit R).

The President of the United States submitted Mr. Elliott's memorandum to the Secretary of the Interior (exhibits H. and P). The Secretary of Interior replied to the President that "if Congress should decide to abolish the preferential rate which the Government now secured on land-grant railroads, then it would appear equitable that grant lands remaining in the hands of these railroads or lands to which they may still have a right should be returned to the Government (last paragraph, exhibit P).

The President of the United States likewise transmitted the memorandum of this claimant, T. C. Elliott, to the Attorney General of the United States. On December 23, 1938, the Attorney General returned the memorandum to the President with certain suggestions with respect to the effect of such legislation upon certain claims of land-grant railroads against the United States. The President in turn advised the Attorney General on January 9, 1939, to submit the suggestions contained in that letter to the chairman of the appropriate

House and Senate committees (exhibit H). On January 31, 1939, the Attorney General forwarded a letter to the chairman of the House Committee on Interstate Commerce which suggested the legislation which became section 321 of the Transportation Act of 1940 (last paragraph, memorandum, Department of Justice exhibit R).

The Assistant Secretary of the Interior claims T. C. Elliott opposed section 321 of the Transportation Act of 1940 (exhibit U, par. 6 and last paragraph thereof). This led the Department of Justice in the last paragraph of its memorandum to conclude on the basis of the conclusion reached by the Department of Interior, that claimant had opposed section 321 of the Transportation Act of 1940 (exhibit R). Such a position, however, is entirely inconsistent with the position which this claimant vigorously asserted in opposition to similar legislation as is admitted by the Department of Justice (exhibit R). Likewise it is inconsistent with claimant's own position in a letter concerning S. 2009 (sec. 321 of the Transportation Act of 1940) where he states in a letter to the President of the United States (par. 5, exhibit T). "In contrast * * * S. 2009 has passed the Senate without the land-grant question being involved. However, the House of Representatives has rewritten or amended the Senate bill so as to include therein the elimination and destroying of the Government's land grant rights and equities. This bill has passed the House with this amendment in it and has been referred to a conference committee. So you may readily see that the Government's position with reference to forever losing these valuable equity rights is most precarious."

Finally, with reference to claimant's position, the following individuals maintain the benefit to the Government was to a substantial degree the result of claimant's stand: The Comptroller General of the United States (last paragraph, exhibit M); Hon. Tom Connally, ex-United States Senator (Texas) (last paragraph, exhibit Q).

The Department of Interior states in the last paragraph of its letter of March 28, 1952, with reference to the value of claimant's services: "As to the part played by Mr. Elliott *before Congress* this is a matter which the records of the members and the committees involved should reveal. *We have not examined these records.* (Italics ours.) (Exhibit I.) This committee accepts the suggestion of the Department of Interior and in view of the voluminous list of statements and correspondence made by Senators and Congressmen who were in a position to know the role which this claimant played in Congress and the value of the data which he submitted during the activities preceding enactment of the Transportation Act of 1940, and who likewise were in a position to know whether or not the role of this claimant was instrumental in effecting substantial savings to the Government of the United States, the committee accepts such evaluation as opposed to any statements to the contrary.

A second service upon which claimant seeks financial recognition is through data submitted which resulted in:

II. SAVINGS TO THE TENNESSEE VALLEY AUTHORITY, 1936

It will be remembered that Congressman J. Hardin Peterson of Florida was the official consulted by this claimant and who suggested to officials of the Department of Justice that they consult with claimant prior to introduction of H. R. 10641 preceding enactment of the

Transportation Act of 1940 (par. 8, memorandum, Department of Juctice, exhibit R). In connection with savings on freight rates to the Tennessee Valley Authority, it is the opinion of the Comptroller General of the United States that this claimant was instrumental in bringing about land-grant rate reductions on shipments of cement, iron, and steel to the Tennessee Valley Authority resulting in savings to the Government of approximately $275,000 as of May 9, 1936 (par. 3, exhibit M). This is substantiated by Senator Sheppard (par. 3, exhibit G), and by Congressman Peterson of Florida (par. 3, memorandum of Congressman Peterson addressed to Chairmen Langer and Reed, exhibits Q–1), together with Congressman Peterson's correspondence with the Tennessee Valley Authority on the subject (exhibits L–1, L–2, L–3, and L–4). In view of this evidence, the committee accepts this view of claimant's services, despite the statement set forth in paragraph 3, of exhibit R, Memorandum of the Department of Justice, to the contrary.

A final and third claim to financial recognition for services rendered beyond the scope of employment by claimant is the following:

III. SAVINGS TO THE NAVY DEPARTMENT DURING AND PRIOR TO WORLD WAR I

These savings, according to claimant, resulted in a reduction from third to fourth and fifth class in freight rates on armor and deck plates (exhibit V). The Department of the Navy admits that this claimant, T. C. Elliott, in the year 1907 and again during World War I furnished the Navy Department (now the General Accounting Office) with valuable transportation information and data which resulted in savings to the Government, although the Department of the Navy has no statistics upon which to estimate the savings effected (par. 3, exhibit W).

CONCLUSION

The committee recognized the fact that each year the Government benefits from extraordinary services voluntarily rendered by its employees beyond the scope of their employment or compensation. Statutory provisions now exist which likewise permit recognition of meritorious services by Government employees beyond their regular compensation. This claimant cannot avail himself of such financial recognition since the statute was not in force at the time of his retirement. The present statute (Public Law 609, ch. 744, sec. 14, 79th Cong., 2d sess., 1946) limits financial recognition to $1,000 per year, or an aggregate of $25,000. This claimant was an employee of the Federal Government for 34 years. By admission of the Department of the Navy, as far back as 1907, this claimant furnished the Navy with valuable rate data. The financial recognition which claimant seeks through this bill ($15,000) if spread over his entire 34 years of service would be far below the statutory limit set by Public Law 609, whether measured on a year by year or upon a aggregate total basis. In view of this, coupled with the extraordinary value of claimant's services as estimated by those officials who were in a position to know their value, the committee therefore reports H. R. 2470 favorably.

EXHIBIT A

LOWRY AIR FORCE BASE, DENVER—MEMORANDUM OF DISAPPROVAL

I am withholding my approval from S. 1687, for the relief of T. C. Elliott.

The purpose of this enactment is to pay to T. C. Elliott of Daytona Beach, Fla., the sum of $15,000, as compensation for his services in preparing and furnishing certain information to Members of Congress. The bill provides that payment authorized shall be free of Federal income tax.

This bill is faulty for two reasons. First, the exemption of the award from all Federal income taxes is totally unwarranted. Second, it is stated in the enactment that the payment is "compensation for services rendered." The record demonstrates that the sum to be paid is not true compensation, but a monetary award for special services.

The claimant, T. C. Elliott, was an employee of the Federal Government from November 1, 1900, until his retirement, January 31, 1944. During this period of employment Mr. Elliott was an auditor in the Navy Department, the Treasury Department, and the General Accounting Office. In such a position he became conversant with freight rates and transportation problems and furnished data on these subjects on many occasions to individual Members of Congress and to various committees of the Congress.

It is conceded that Mr. Elliott, in addition to performing his regular duties, rendered valuable service to Members of Congress. His efforts undoubtedly contributed to a saving to the Government of large sums of money, but the record is also clear that these services were rendered by Mr. Elliott voluntarily, after office hours, on his own time, or on his leave time and were completely aside from his official duties or the requirements of his office. Mr. Elliott, like thousands of other devoted Government employees, is to be commended for the unselfish manner in which he made his knowledge of freight rates available to others.

Each year there accrue to the Government the beneficial results of extraordinary services rendered by interested private citizens and organizations who volunteer much useful information and experience to the Congress, to its individual Members, and to the executive branch agencies as well. I do not believe that claims for compensation for such volunteer services should be encouraged. Approval of legislation for that purpose would ratify an irregular and unformalized employment relation, and would also place the Congress and the executive agencies in an unacceptable and unbusinesslike position. If such services are to be on a regular or recurring or even a sporadic basis, formal arrangements for employment should be made. There are numerous alternatives. A regular full-time or part-time appointment, appointment as a consultant at a per diem or an hourly rate, and performance of work by contract are the most common. If the service is performed outside of a formal employment relationship, whatever recognition may be given to it should not be considered compensation.

I do not want my action in withholding approval of this bill to be construed as derogation of Mr. Elliott's services or as criticism of recognition by the Congress of special services afforded to its Members. While I cannot approve the bill in its present form for the reasons given above, I shall be glad to approve a bill which is by its terms an extraordinary monetary award for special service and which removes the tax-free status of the award.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE,
September 2, 1954.

EXHIBIT A–1

UNITED STATES SENATE,
COMMITTEE ON PUBLIC WORKS,
May 26, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: As your files will indicate, during the 1st session of the 82d Congress, I introduced S. 2280, a bill for the relief of T. C. Elliott, which bill died in committee at the adjournment of the Congress. On April 18, 1953,

I reintroduced this measure, as S. 1687, 83d Congress, and it is presently pending before your committee.

I am sure the committee has full and complete information upon which to base a decision with regard to this bill, and I will therefore not burden the record further by setting out all of the facts at this time.

I feel that Mr. Elliott has saved the Federal Government a great deal of money by his efforts on his own time, and I am sure the committee file will so indicate.

I sincerely appreciate the courtesy of the committee in arranging a hearing on this bill, and I hope it will receive favorable consideration.

With kind regards, I remain,

Yours faithfully,

SPESSARD L. HOLLAND.

EXHIBIT B

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., July 4, 1953.

Hon. PAT MCCARRAN,
Chairman, Judiciary Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR: It so happens that I have known Mr. T. C. Elliott many years. In fact, he grew to manhood in the district which I now represent.

The $15 million alleged to have been saved in S. 2280 (Holland) and H. R. 7144 (Herlong) covered many arduous years of Mr. Elliott's life. It could be that Mr. Elliott should have presented this matter to Congress many years ago, but, on the other hand it may be that Congress has been negligent in failing to recognize the valuable services he has rendered his Government.

This is a most unusual case, therefore, I am asking that you try to give it favorable consideration.

Yours very truly,

JAMES W. TRIMBLE.

EXHIBIT C

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., July 17, 1953.

Senate Judiciary Committee (Attention of Mr. Miller)
House Judiciary Committee (Attention of Miss Orcutt)
Re Senate 1687 and H. R. 4805.

The above-entitled bills authorize an appropriation of $15,000 as a recognition of the valuable services rendered during the period of 1936 to 1944 by Mr. T. C. Elliott which resulted in helping to save the Federal Government millions upon millions of dollars.

The services rendered by Mr. Elliott were in connection with helping to prevent and to delay the cancellation of the Federal Government land grants, which were at that time bringing an annual revenue to the Government of approximately $8 million annually.

I have personally known and been in close contact with Mr. Elliott since 1936. His services and activities with respect to his help and relationship to a good many Members of the Senate and House is quite well shown in exhibit J, incorporated in the files of this case.

It appears that various governmental units have recommended a disallowance of this bill on account of its creating a precedent. If the saving of the millions of dollars, as the records indicate in this case, creates a precedent, it would seem to be a profitable venture for the Congress to go into the precedence business. In this connection, it may be in order to invite attention to what Congress has already done with respect to giving recognition to a similar situation (see act of August 2, 1946 (809–c, 744–14)).

The records in this case further indicate that in addition to the millions of dollars saved in the so-called land grants, Mr. Elliott also helped to save hundreds of thousands of dollars in the making of various rate and traffic adjustments.

The passage of this bill has my approval.

W. R. POAGE, *Congressman, 11th Texas District.*

EXHIBIT D

HOUSE OF REPRESENTATIVES,
Washington, D. C., July 17, 1953.

SENATE JUDICIARY COMMITTEE,
Senate Office Building, Washington, D. C.
(Attention of Mr. Miller.)

DEAR MR. MILLER: I am joining with Senator Holland in S. 1687, with H. R. 4805 involving an allowance of $15,000 to Mr. T. C. Elliott as recognition for the valuable services he has voluntarily rendered the Federal Government.

The record in this case seems to clearly indicate that, aside from his official duties or the requirements of the office by which he was employed, Mr. Elliott appeared before various committees of the House and Senate, furnished a great deal of information and data to Members of Congress concerning the Federal land-grant question. This activity and service on the part of Mr. Elliott had the effect of preventing the cancellation or elimination of the so-called land grants for many years. The income accruing to the Government on reduced rates on its transportation was running around $8 million annually. Mr. Elliott's services were rendered during the period of 1936 to 1944.

While the activities of Mr. Elliott indicate that he helped bring about the saving of many millions of dollars, some of the governmental units are signifying opposition to the passage of this bill because it would create a precedent. Congress passed a bill in 1946 (60 Stat. 809c, 744–14) which authorizes cash awards to be made for the rendition of such services as those performed and covered in this bill.

It is further observed that the activities Mr. Elliott voluntarily rendered cover savings of hundreds of thousands of dollars in the adjustment of rate and traffic matters; therefore, in all fairness it seems this bill should be enacted.

Most sincerely,

A. S. HERLONG, Jr.

EXHIBIT E

HOUSE OF REPRESENTATIVES,
Washington, D. C., May 27, 1954.

Senate Judiciary Committee (Attention of Mr. Miller)
House Judiciary Committee (Attention of Miss Orcutt)
Re 1687 and H. R. 4805

The above-entitled bills authorize an appropriation of $15,000 as a recognition of the valuable services rendered during the period of 1936 to 1944 by Mr. T. C. Elliott which resulted in voluntarily helping to save the Federal Government millions upon millions of dollars.

The services rendered by Mr. Elliott were in connection with helping to prevent and to delay the cancellation of the Federal Government land grants, which were at that time bringing a revenue to the Government of approximately $8 million annually.

I have known Mr. Elliott for several years and he presently resides in my district at Daytona Beach, Fla. The record as I have it indicates that his activities and services with respect to his help to and relationship with a great many Representatives and Senators is well shown in exhibit J, incorporated in the files of this committee. For some unknown reason it appears that various governmental units have recommended a disallowance of this bill presumably on the grounds that it creates a precedent. With respect to this it will be quite interesting for the committee to look into the record and find that Mr. Elliott has created precedent upon precedent which has saved the Government in numerous cases, not only thousands, but millions of dollars, and involved methods of procedure that had never before that time been used by the Government.

I would suggest also that you give careful consideration to the letters incorporated in this file involving letters to and from the President of the United States and Senator Sheppard concerning Mr. Elliott's activities.

I am inclined to agree with and endorse the views expressed to you by Congressman W. R. Poage in his letter of July 17, 1953, with respect to the question of precedents and the advisability of the Government going into this business.

Most sincerely,

A. S. HERLONG, Jr.

EXHIBIT F

HOUSE OF REPRESENTATIVES,
Washington, D. C., July 25, 1953.

Re S. 1687.

Hon. WILLIAM LANGER,
Committee on the Judiciary, United States Senate,
Washington, D. C.

DEAR CHAIRMAN LANGER: The above-mentioned bill was introduced by Senator Holland in favor of T. C. Elliott, providing for the payment of $15,000 to compensate for his saving the Federal Government many millions of dollars.

It has been my privilege to know Mr. Elliott since 1941 and to know of his activities toward preventing the elimination or cancellation of the Federal land grants from 1936 to 1944. This activity on his part required his attending and testifying before the House and Senate and before various other units of the Federal Government. It is my understanding, and the record seems to bear me out, that such activities and services were voluntarily rendered and aside from his official duties.

At the time such services were rendered Mr. Elliott was an employee of the General Accounting Office, but said services were outside the domain or requirements of that Office. The question has been raised by certain units of the Government as to this bill creating a precedent. The answer to this question seems to be covered by an act of Congress of August 2, 1946 (60 Stat. 809–c, 744–14), and if not fully justified by that act, it would only be recognizing good commonsense for the Government to go into the precedence business where someone voluntarily renders to the Government a service resulting in the saving of millions of dollars as was true in this case.

Apart and aside from the savings involved in the land grants, the record also shows that Mr. Elliott brought about savings of hundreds of thousands of dollars in securing various rate and traffic adjustments.

Your careful and favorable consideration of this bill will be greatly appreciated.

Sincerely yours,

VICTOR WICKERSHAM,
Member of Congress.

EXHIBIT G

UNITED STATES SENATE,
COMMITTEE ON MILITARY AFFAIRS,
October 5, 1940.

President FRANKLIN D. ROOSEVELT,
The White House, Washington, D. C.

MY DEAR MR. PRESIDENT: I deem it appropriate to refer to the matter discussed in your letter to me on June 26, 1939, which had reference to a memorandum prepared by Mr. T. C. Elliott and the report made thereon to you by the Department of Justice concerning railroad land grants and which memorandum was transmitted by me to you on November 14, 1938.

In this connection I may advise that the recent railroad legislation enacted in bill S. 2009 contained a provision whereby the railroads are required to waive all outstanding claims against the Government as a condition for the Government foregoing its right to have reduced rates on its transportation of certain supplies. I believe it proper to say that the memorandum prepared by Mr. Elliott had for its purpose the protection of the Government's equities because of these land grants, including claims for lands against the Government. It is my understanding that before the memorandum was prepared by Mr. Elliott he discussed with various officials of the Department of Justice the matter of a claim of the Northern Pacific Railroad in which judgment had been confirmed against the Government by the United States Circuit Court of Appeals involving approximately $10 million. Mr. Elliott was advised by Assistant Attorney General Carl MacFarland, that the Justice Department did not deem it advisable nor would it be its policy to take action on the railroad bill then pending unless some specific matter was referred to that Department for consideration. In view of that understanding, I suggested to you in my letter of transmittal of Mr. Elliott's memorandum that you kindly refer the papers to the Department of Justice for such action as it deemed proper. The final result has, therefore, resulted in a saving of approximately $10 million.

It might further interest you to know that during the period of the World War, Mr. Elliott was instrumental in helping save over $200,000 on shipments of deck and armor plates to the Pacific coast by preparing certain rate data and a brief for the Navy Department and during the year 1936 he rendered assistance to Representative J. Hardin Peterson (Florida) which saved $275,000 on shipments of cement and iron and steel for the construction of dams for the Tennessee Valley Authority by having the method of shipping changed.

I am bringing these matters to your attention with the hope that some way may be found by which recognition may possibly be given Mr. Elliott in the way of a more substantial salary than he is now receiving. He is employed in the General Accounting Office, in the classified civil service at a salary of $2,300 per annum.

With respect to some places in which Mr. Elliott could, no doubt, render valuable service, mention may be made that the recent railroad legislation, S. 2009, authorization was given for the appointment of three persons to go into the question of transportation from various angles. That committee will need assistants, advisers, examiners, and a secretary, and it might be advisable to have someone connected with such committee to look after and represent the shipping interest of the Government. I am of the opinion that Mr. Elliott is fully capable of filling such positions with said committee.

Yours very sincerely,

MORRIS SHEPPARD.

EXHIBIT H

HYDE PARK, N. Y., *June 26, 1939.*

Hon. MORRIS SHEPPARD,
United States Senate, Washington, D. C.

MY DEAR SENATOR SHEPPARD: This acknowledges your letter of June 3d, requesting me to submit to the Senate Committee on Interstate Commerce any reports that the Departments of Justice and Interior may have made to me with respect to the memorandum of Mr. T. C. Elliott which you transmitted to me by letter dated November 14, 1938.

Mr. Elliott's memorandum, relating to legislation which would repeal those provisions of the railroad land-grant acts requiring land-grant railroads to provide postal, military, naval, and other governmental transportation services at rates less than the usual charges, was referred to the Department of Justice for its comment. On December 23, 1938, the Attorney General returned the memorandum with certain suggestions with respect to the effect of such legislation upon certain claims of land-grant railroads against the United States. I advised the Attorney General on January 9, 1939, to submit the suggestions contained in that letter to the chairmen of the appropriate House and Senate committees, which I am advised he did by letter dated January 31, 1939, to Hon. Clarence F. Lea, chairman of the House Committee on Interstate and Foreign Commerce and by letter dated April 10, 1939, to Hon. Burton K. Wheeler, chairman of the Senate Committee on Interstate Commerce.

I have also submitted the memorandum of Mr. Elliott to the Secretary of the Interior and in the event that the Secretary, who has already commented on the proposed legislation to the appropriate committees, has any further suggestions they will be duly transmitted to the committees.

With kindest regards.

Very sincerely yours,

FRANKLIN D. ROOSEVELT

EXHIBIT I

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., March 28, 1952.

Hon. SPESSARD L. HOLLAND,
United States Senate, Washington, D. C.

MY DEAR SENATOR HOLLAND: There are enclosed for your information a copy of a letter I have sent to the Attorney General relating to S. 2280, a bill for the relief of T. C. Elliott, and copies of the enclosures referred to in that letter.

While I have no particular desire to oppose Mr. Elliott's claims, I believe the records of the Department do not support them.

There can be no doubt, however, of the following: (1) Mr. Elliott on November 13, 1939, wrote a letter to the President vigorously opposing the very section of H. R. 2009 (76th Cong.) which subsequently became section 321 of the Transportation Act of 1940 (49 U. S. C., 1946 ed., sec. 65) and for which he now claims credit, and (2) subsequent to the enactment of the 1940 act, Mr. Elliott urged enactment of further legislation on the land grants (S. 1018, 77th Cong.)which was opposed by this Department and which did not pass.

As to the part played by Mr. Elliott before Congress, this is a matter which the records of the Members and committees involved should reveal. We have not examined those records.

Sincerely yours,

DALE E. DOTY,
Assistant Secretary of the Interior.

EXHIBIT J

HOUSE OF REPRESENTATIVES,
Washington, D. C., March 17, 1943.

HON. D. SMITH,
Director, Bureau of the Budget,
Washington, D. C.

MY DEAR MR. SMITH: As you have perhaps been advised, Mr. T. C. Elliott, who is now employed in the General Accounting Office, has for many years been interested and actively engaged in rate and transportation work. In the course of his activities he has been instrumental in helping to bring about certain changes and corrections in laws, departmental regulations, and customs which have resulted in saving the Federal Government over $10 million.

Quite a number of the Members of the Senate and House have been helped toward a better understanding of certain phases of legislation incorporated in bills pertaining to questions of transportation for the Federal Government including various changes in railroad land-grant laws. We feel a need for a continuance of the kind of services which Mr. Elliott has so kindly been voluntarily rendering, but there seems to be no available committee here at the Capitol to which he may be properly attached.

In view of the fact that your Office is required to give consideration and approval to the class of legislation in which Mr. Elliott has been interested and on which he has been able to give valuable counsel and advice, we are taking this opportunity to suggest that his services would be of value to your Office, as well as to ourselves, in an advisory capacity on matters of transportation in which the Government is vitally concerned.

Your favorable consideration of this matter will be appreciated.

Respectfully submitted.

JED JOHNSON.
J. HARDIN PETERSON.
LEX GREEN.
JOE HENDRIX.
PAT CANNON.

Endorsed and approved by: Senators Charles O. Andrews, Claude Pepper, W. Lee O'Daniel, and Hattie W. Caraway; Congressmen J. Percy Priest, Jos. R. Bryson, Sam Hobbs, Victor Wickersham, H. Leonard Allen, Estes Kefauver, J. H. Folger, B. B. Hare, Joe B. Bates, W. R. Poage, John R. Murdock, and Ed. Gossett. Letter from Senator Tom Connally.

EXHIBIT K

HOUSE OF REPRESENTATIVES,
Washington, D. C., May 31, 1954.

HON. WILLIAM LANGER,
Chairman, Judiciary Committee, United States Senate,
Washington, D. C.

DEAR MR. CHAIRMAN: I wish to submit this statement with regard to T. C. Elliott in whose behalf a private bill has been introduced. I am confident that all of the facts relating to this measure have been fully developed and my purpose

in submitting this statement is simply to vouch for Mr. Elliott's good faith and to state that I have known him for a period of 15 years and have personal appreciation of his service for the Federal Government and his reputation as a faithful employee. He has many friends in the Congress who will appreciate your consideration of his claim.

Sincerely yours,

BROOKS HAYS.

EXHIBIT L

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D. C., September 18, 1951.

Mr. T. C. ELLIOTT,
Daytona Beach, Fla.

DEAR MR. ELLIOTT: This is in further reference to your letter of May 21, 1951, with regard to an increase in the allowance of present retired employees.

I realize that in a system as large as the civil-service retirement system there are bound to be some inequities with respect to the annuities that are paid to retired civil-service employees. As you know the civil-service retirement fund is made up of deductions from the salaries of Federal employees and a contribution by the Federal Government. If the expenditure in the form of annuities is increased there will have to be a corresponding increase either in the deductions from the salaries of Federal employees or in the contribution from the Federal Government.

At the present time 6 percent is deducted from employees' salaries for retirement purposes. Any increase in the deductions would undoubtedly affect many of the present employees who are in the lower salary groups. This is one of the reasons why I advocated much caution with respect to increasing the allowances of the present retired employees.

I realize that your case presents unusual circumstances because of your efforts in bringing about the return of 8½ million acres of land to the public domain and the cancellation of the judgment of $10 million which had been secured against the Federal Government. It is unfortunate that at that time there was not in existence machinery under which a suitable award could have been made to you for your services. I understand that Mr. Byrd of Congressman Herlong's office has discussed with Mr. Alfred Klein, the Commission's chief law officer, the possibility of the introduction of a private bill to provide for a suitable award for your services. Legislation along that line would probably be more appropriate than an increase in your present retirement annuity.

Sincerely yours,

ROBERT RAMSPECK, *Chairman.*

EXHIBIT L–1

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 27, 1936.

Hon. ARTHUR E. MORGAN,
Tennessee Valley Authority, Knoxville, Tenn.

MY DEAR MR. MORGAN: Some months ago I wrote you in regard to the purchasing of supplies, namely, iron, steel, and cement from the Birmingham district to be used in construction of dams under your jurisdiction. I will appreciate it if you will be good enough to advise me at this time approximately the number of tons of such supplies which have been purchased by the Tennessee Valley Authority since you took office. It is my understanding that this material is now being purchased f. o. b. point of origin instead of destination, advise if this is correct. Unfortunately my file on this subject has been mislaid and I am unable to find it.

Kindest personal regards.

Sincerely,

J. HARDIN PETERSON.

EXHIBIT L–2

TENNESSEE VALLEY AUTHORITY,
Knoxville, Tenn., May 5, 1936.

Hon. J. HARDIN PETERSON,
House of Representatives, Washington, D. C.

DEAR MR. PETERSON: I have your letter of April 27 requesting the approximate tonnage of such supplies as iron, steel, and cement which have been purchased in the Birmingham district by the Tennessee Valley Authority since its organization. You indicate that you wrote us before on this subject, but we have searched our files and cannot find such a letter. It may have gone astray in the mails and I am sorry you have not had a reply.

It would be difficult for us to give you accurate data in response to your request, as we do not compile detailed records of this nature because of the cost involved. However, we are very glad to give you the approximate tonnage of iron, steel, and cement which has been purchased in the Birmingham district.

The approximate figures for iron and steel are as follows:

	Tons
Reinforcing and bolt steel	12, 000
Transmission line towers	750
Miscellaneous shapes, including rails	1, 000

We have also purchased in that area a number of all-steel barges and fabricated steel structures running into thousands of tons. All of this material has been purchased both f. o. b. destination and f. o. b. point of origin.

All cement from that section was purchased f. o. b. destination. Our cement requirements placed in the Birmingham district with four cement mills are as follows:

	Barrels
Wheeler Dam	420, 000
Pickwick Landing Dam	475, 000
Guntersville Dam	525, 000
Chicamauga Dam	350, 000

If you would like to have more detailed information, we shall be glad to ask our Procurement Section to compile it for you.

With best wishes, I am,
Sincerely yours,

ARTHUR E. MORGAN,
Chairman of the Board.

EXHIBIT L–3

HOUSE OF REPRESENTATIVES,
Washington, D. C., May 9, 1936.

DR. ARTHUR E. MORGAN,
Chairman of the Board of the Tennessee Valley Authority,
Knoxville, Tenn.

MY DEAR DR. MORGAN: I have your letter of the 5th instant advising approximate tons of cement and certain articles of iron and steel which have been shipped from the Birmingham district to dams under construction in the vicinity of Knoxville, Tenn.

In regard to your statement with respect to purchasing of certain iron and steel materials both f. o. b. destination and f. o. b. point of origin, I beg to advise that in the correspondence I had with you some months ago on this subject I invited your attention to the fact that land-grant deductions were applicable on all Government shipments and that if you would buy such material f. o. b. destination instead of point of origin it would result in a substantial saving to the Government on such shipments. For your further information I will advise at this time that the saving on iron and steel articles between the points in question is approximately 5 percent per hundred pounds and as you will readily recognize amounts to a considerable sum of money where thousands of tons are moving.

It is also my understanding that as a result of our previous correspondence that you would endeavor to so purchase materials for these dams so as to effect the savings involved. I will appreciate your further advice as to your views with respect to making future purchases in which these savings may be brought about.

Kindest personal regards.
Sincerely,

J. HARDIN PETERSON.

EXHIBIT L–4

TENNESSEE VALLEY AUTHORITY,
Knoxville, Tenn., May 22, 1936.

Hon. J. HARDIN PETERSON,
House of Representatives, Washington, D. C.

DEAR MR. PETERSON: I am sorry that absence from the city has delayed my reply to your letter of May 9 with reference to taking advantage of land-grant deductions on Government bills of lading on purchases made by the Authority.

The Government uses Government bills of lading wherever such procedure results in a lower delivered costs. There are occasions when a contractor can deliver structural steel shapes, forms, etc., manufactured under the fabrication-in-transit privilege at a much lower cost to us than could be obtained by use of Government bills of lading. Where material is finished under the fabrication-in-transit privilege, contractors will not allow us to use Government bills of lading on f. o. b. destination bids because of the price adjustment and freight refund given the fabricator by the mill from which the steel is purchased.

Whenever possible purchases of all other items of fabricated steel are made on the basis of f. o. b. point of origin so as to take advantage of deductions by use of land-grant rates.

Commodities, such as cement, reinforcing steel, bolt steel, steel sheets, and piling, are always awarded f. o. b. destination because trade practices of these industries will not permit bids to be made f. o. b. point of origin; yet movement is on Government bills of lading to take advantage of land-grant rates.

The Authority maintains a daily contact with the Traffic Section of the Procurement Division of the United States Treasury Department in Washington, and no opportunity is missed to obtain the lowest delivered cost on materials by application of the land-grant privilege.

Sincerely yours,

ARTHUR E. MORGAN,
Chairman of the Board.

EXHIBIT M

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, November 20, 1951.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate

MY DEAR MR. CHAIRMAN: The Department of Justice has advised this office of a request received from your committee for a report on S. 2280, 82d Congress, entitled, "A bill for the relief of T. C. Elliott."

The bill authorizes the payment of $15,000 to Mr. T. C. Elliott, Daytona Beach, Fla., for compensation for services rendered to the United States in addition to his duties as a Government employee in preparing and furnishing rate and transportation information for the use of Members of the Senate and of the House of Representatives and of various other officials of the Government. Such information is stated in the bill to have resulted in savings to the United States of approximately $15 million.

Mr. Elliott began his services as a Government employee at the Navy Yard, New York City on November 1, 1900. He served in various capacities in several agences of the Government, except for a short period of private employment, until January 31, 1944, when he retired from the position of auditor in the General Accounting Office. It appears that he expended considerable time and effort outside the hours of his official duties in matters looking to the protection of the interests of the Government in transportation problems. One of the benefits he was instrumental in bringing about was securing land-grant rate deductions on shipments of cement, iron, and steel to the Tennessee Valley Authority, resulting in savings to the Government of approximately $275,000 as of May 9, 1936. In this connection, see page 83 of the Hearings before the Senate Subcommittee on Interstate Commerce, 76th Congress, on S. 1915, S. 1990, and S. 2294. Mr. Elliott gave extensive testimony on transportation matters during 1939 and 1940 before such subcommittee of the Senate, as well as the corresponding committee of the House of Representatives. Also, by letter dated February 6, 1940, B–8367, the Acting Comptroller General authorized Mr. Elliott, who was then an employee of the General Accounting Office, to assist, outside of his office hours, Senator

Morris Sheppard in certain legislative matters relative to transportation. Also, an item relating to his work appears in the Congressional Record for May 25, 1950, under an Extension of Remarks of the Honorable Edward H. Rees, Volume 96, Part 15, A–3999.

The benefits to the Government on these transportation matters which were brought about to a substantial degree through the efforts of Mr. Elliott, were the results of his efforts as an individual and a private citizen and it is believed were performed without any thought at the time of receiving a monetary aware. It is my view that legislation such as S. 2280 rewarding the voluntary service by a public-spirited citizen would establish an undesirable precedent. For that reason, this Office does not recommend favorable consideration of the bill. In the event favorable action is recommended by the committee, you may be advised that his Office has no statistics from which the estimated savings of $15 million may be verified.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

EXHIBIT N

VIENNA, VA., *July 24, 1953.*

Senate Judiciary Committee (attention of Mr. Miller).
House Judiciary Committee (attention of Miss Orcutt).
Re S. 1687 and H. R. 4805.

This is to certify that I have known Mr. T. C. Elliott since April 1918; that during the years between 1918 and 1944 I was associated somewhat closely to the work of Mr. Elliott during his long career in Government service.

My first association with him was in 1918 when he was employed by the Auditor of the Navy and I was employed by the Auditor of War, both in the Treasury Department. It was in that work we checked rates and made land-grant deductions on Government freight and military impedimenta. Mr. Elliott continued to work in that field for many years. In the middle 1930's proposals were considered by the Congress for the repeal of the so-called land-grant laws. Mr. Elliott, at that time and during the entire time that these proposals were pending before the Congress upon his own initiative, during his own time, and at his own expense, as a citizen vigorously opposed the repeal of the land-grant laws. His participation as a witness before committees at hearings and his work for Members of the Congress, particularly Senator Sheppard, of Texas, Representative Peterson, of Florida, and others, all of which is shown by the records and by exhibits in the current files in connection with the above-numbered pending bills.

In those and previous bills, it is proposed to recognize by way of financial consideration the services rendered by Mr. Elliott. The reasons for this reward, as shown by the records, is based on the alleged millions saved by the Government during the time that his assistance in opposing the repeal, along with others, prevented the enactment of the law. During Mr. Elliott's period of service in the Government there was not in effect, as now, a system of giving financial reward for suggestions for improvement of the service or economies that might be effected. That his work was substantial is reflected by the records and particular reference is made to the recognition thereof in exhibit J of the file current with these bills, being a letter dated March 17, 1943, addressed to Hon. D. Smith, Director of the Bureau of the Budget, and signed or endorsed by 15 Senators and 26 Congressmen as their names appear on aforesaid exhibit J.

Approval of this bill would appear to effect fairness to Mr. Elliott in recognition of his services commensurate with the reward program now in effect for such services.

Respectfully submitted.

O. L. MOHUNDRO.

EXHIBIT O

SILVER SPRING, MD., *June 2, 1954.*

Hon. WILLIAM LANGER,
Chairman, Senate Judiciary Committee,
The Capitol, Washington, D. C.

MY DEAR SENATOR: It has been brought to my attention that there is presently before your committee for hearing a bill to appropriate a sum of money to com-

pensate Mr. T. C. Elliott for services rendered by him with regard to certain matters affecting the transportation of Federal property. I understand the bill is identified as S. 1687.

For whatever value it may have in connection with consideration of this matter by your committee this is to advise that it is matter of personal knowledge to me that during the 1930's when numerous bills to repeal the land-grant statutes were before the Congress from time to time, Mr. Elliott, who during that period was I believe employed by the General Accounting Office, used much of his annual leave to engage in research pertaining to railroad land grants, resulting in savings to the Government, and related elements. I have been informed that the material which Mr. Elliott thus developed was assembled by him and made available to Government agencies and congressional committees.

During the period referred to in the preceding paragraph I was Chief, Traffic Section, Procurement Division, United States Treasury, and in that capacity directed the development of considerable data concerning the same subject, and thus became aware of Mr. Elliot's interest and activity.

Very truly yours,

W. E. HAYGHE.

EXHIBIT P

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., July 19, 1939.

The PRESIDENT,
The White House.

MY DEAR MR. PRESIDENT: On April 6, you referred to this Department for consideration a communication from Senator Morris Sheppard, transmitting a brief by Mr. T. C. Elliott relating to a proposal now before the Congress to eliminate the preferential rates which the Government enjoys on land-grant railroads.

Mr. Elliott set forth a number of reasons why this part of the relief requested by the railroads should not be granted. In summary, Mr. Elliott asserted that the land grants made to assist in the building of certain transcontinental railroads have exceeded in value the revenues received by the Government through preferential rates, and that certain aspects of the matter ought to be given further study. Mr. Elliott challenges some of the findings of the committee appointed by you and headed by Mr. Carl R. Gray, to study the plight of the railroads and make recommendations of a remedial character.

Since submitting this communication of Mr. Elliott's, Senator Sheppard has introduced a bill calling for an investigation of the whole question of land grants to railroads. The proposed enactment would place the responsibility for the inquiry in the General Land Office of the Department of the Interior.

This Department does not have sufficient basic data to enable it to comment critically on the report of the Special Committee on Financial Relief to the railroads. Therefore, it cannot at this time and without considerable study undertake any comprehensive response to the matters set forth in Mr. Elliott's brief. At the same time, however, it feels that if the Congress in considering railroad legislation should deem it wise to conduct an inquiry into the land grants to determine whether the conditions of the several grants have been fulfilled, the General Land Office in this Department would be an appropriate agency to make such an inquiry. This was the content of the report by the Department of the Interior on the bill, S. 2294.

In this connection I might say further that if the Congress should decide to abolish the preferential rate which the Government now secures on land-grant railroads, then it would appear equitable that grant lands remaining in the hands of these railroads or lands to which they may still have a right should be returned to the Government.

The correspondence which you transmitted in your letter of April 6, is returned herewith.

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.

EXHIBIT Q

WASHINGTON, *June 3, 1954.*

STATEMENT OF TOM CONNALLY, FORMER UNITED STATES SENATOR FROM TEXAS

It is my understanding there is now pending before the United States Senate a bill 1687 which has for its purpose the setting aside or appropriation of the sum of $15,000 for T. C. Elliott for services he rendered the Government, aside from his official duties.

The record seems to clearly indicate that prior to Mr. Elliott's retirement in 1944, for many years he had been active and interested in helping save the Federal Government many millions of dollars on matters of transportation. I most distinctly recall Mr. Elliott's coming to and conferring with me and former Senator Morris Sheppard on various ways in which the Government's interests could be advanced and protected. This was decidedly true in the Federal Government making certain changes and corrections with respect to its land-grant holdings and rights. I believe the record will show that Mr. Elliott was almost alone when he entered the fight to save the rights of the Government in this land-grant question.

TOM CONNALLY.

EXHIBIT Q-1

LAKELAND, FLA., *July 18, 1953.*

HON. T. C. ELLIOTT,
Office of Representative Herlong,
House Office Building, Washington, D. C.

DEAR MR. ELLIOTT: I enclose herewith memorandum which I hope will be helpful. My files are not available and I don't have all the details and it is hard for me to make it as definite as I would like to.

I am sure glad to hear from you and hope everything is getting along all right with you.

Kind regards,
Sincerely,

J. HARDIN PETERSON,
Attorney at Law.

MEMORANDUM TO CHAIRMAN LANGER AND CHAIRMAN REED

I have read the memorandum of Mr. T. C. Elliott and some of the matters set forth are matters within my knowledge.

While I was in the House Mr. Elliott from time to time made many suggestions as to safeguarding the Government's interest in the public lands and in the utilization of land-grant rail rates. In the thirties, when there began to be organized a number of Government agencies, Mr. Elliott furnished me information as to areas in which land-grant rates applied and he furnished these to various Government agencies.

Mr. Elliott also made many suggestions to Senator Sheppard and some of these, I understand, were submitted to the President.

Mr. Elliott also made certain suggestions with reference to a bill to safeguard the Government's interest in land-grant rates and counseled considerably with Senator Sheppard and myself when I was on the Public Lands Committee of the House.

It is my recollection that some of the agencies used the suggestions and that it resulted in a substantial savings in freight charges to the Government.

I have known Mr. Elliott for a number of years and it is my observation that he is a most conscientious Government employee, ever on the alert to save money for the Government and to make suggestions that would result in savings.

EXHIBIT R

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 19, 1952.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 2280) for the relief of T. C. Elliott.

The bill would authorize and direct the payment of $15,000 to T. C. Elliott, of Daytona Beach, Fla., for services rendered to the United States prior to 1944, in addition to his official duties as a Federal employee, in preparing and furnishing rate and transportation information for the use of Members of Congress, the Committees on Interstate and Foreign Commerce of the Senate and House, and various other officials and agencies of the Government. The bill states that Mr. Elliott's efforts resulted in a savings to the United States of approximately $15 million.

The information contained in the foregoing reports and the files of the Department of Justice concerning this matter is set out in the accompanying memorandum. From the facts there set out, it would appear that Mr. Elliott was not primarily responsible for the enactment of section 321 of the Transportation Act of 1940 which was a significant factor in the settlement of the Northern Pacific case.

Each year there accrues to the Government the beneficial results which stem from extraordinary discoveries effected by its technical and professional employees in agriculture, medicine, physical science, and related fields of effort. For the Government to attempt to compensate such employees in any degree of proportion to the monetary amounts involved, would be patently impossible. No reason appears why this claimant should be accorded preferential treatment not given to other individuals in similar circumstances.

Accordingly, the Department of Justice recommends against the enactment of the bill and concurs in the adverse views expressed by the other agencies concerned.

The Bureau of the Budget has advised this Office that there would be no objection to the submission of this report.

Sincerely,

A. DEVITT VANECH,
Deputy Attorney General.

MEMORANDUM

It appears that Mr. Elliott began his service with the Government at the Navy Yard, New York City, on November 1, 1900. He served in various capacities in several agencies of the Government, except for a short period of private employment, until January 31, 1944, when he retired from the position of auditor in the General Accounting Office. It further appears that Mr. Elliott expended considerable time and effort outside the hours of his official duties in matters relating to national transportation issues before Congress and the executive department in the late thirties. Early in 1940, the claimant was given permission by the then Acting Comptroller General to assist, outside his office hours, Senator Morris Sheppard with certain legislative matters relative to transportation.

In support of his claim, claimant has submitted several exhibits and a summary statement pertaining to these exhibits which purports to show that he was primarily responsible for legislation that led to the settlement of the Northern Pacific case which was handled by this Department. It is presumed that copies of such exhibits and statement have been furnished to the committee. The legislation he refers to is section 321 of the Transportation Act of 1940 (act of September 18, 1940, 54 Stat. 898) which relieved the railroads from the obligation of transporting persons or property of the United States at land-grant rates provided the railroads released their claims against the Government arising from land-grant contracts. Mr. Elliott states:

"The legislation which was enacted on the recommendations of the Attorney General and Secretary of the Interior as a result of the memorandum prepared by me and transmitted by Senator Sheppard to the President required that all lands remaining unpatented by the railroads should come back to the Government and that all claims by the railroads against the Government concerning such lands should be canceled.

"At the time of enactment of this legislation the Northern Pacific Railroad had a claim against the Government for $10 million which had been approved by a Federal court and sustained by the court of appeals. This $10 million claim was canceled by the Northern Pacific."

A review of the Northern Pacific case and the legislative history of the Transportation Act does not appear to support the claimant's assertions.

Pursuant to the act of Congress of June 25, 1929 (46 Stat. 41), a complaint was filed against the Northern Pacific Railway Co. in the United States District Court for the Eastern District of Washington to quiet title to approximately 2,850,000 acres of land. On June 27, 1939, a decree was rendered by the district court finding that the company was entitled to compensation for 1,453,061 acres of land that had been withdrawn from the public domain for Government use

which prevented the company from making selections for its own purposes pursuant to prior grants by Congress. This case did not go to the circuit court of appeals, but was appealed by both parties directly to the Supreme Court.

On December 16, 1940, approximately 3 months after the enactment of the Transportation Act, the Supreme Court, without mentioning the act, gave its decision in the *Northern Pacific* case, *United States* v. *Northern Pacific Railway Co.* (311 U. S. 317). The court affirmed the decision of the lower court in part, reversed it in part, and remanded the case to the district court for the trial of certain issues, including charges by the Government of breach of contract and fraud in the mineral classification of lands covered by the grant, which, if sustained, could have defeated the company's claim in its entirety. A settlement of the case as agreed upon by the Government and the company was approved by the district court on August 28, 1941 (41 F. Supp. 273). See also Senate Document No. 48, 77th Congress, 1st session (1941), for a detailed report to Congress by the Attorney General relative to the settlement. In view of the fact that there was not a trial of the case on the issues remaining after the case was remanded to the district court, it cannot be stated what the final outcome would have been had the litigation continued to a conclusion. In view of this, the placing of any dollar figure on the value of the settlement is highly speculative.

The release of the company's claim under the Transportation Act was a factor in the settlement. However, there is nothing in the Department's records to connect Mr. Elliott with it.

In reviewing the legislative history of section 321 of the Transportation Act of 1940, and the claimant's relationship to it, it should be observed that several years prior to its introduction there was considerable congressional activity relative to its subject matter. The first bill appears to have been H. R. 10641 introduced in the 74th Congress by Congressman Peterson of Florida on January 27, 1936. The Department's records indicate that some 2 months before the bill was introduced, persons in this Department, at the request of Congressman Peterson, discussed with Mr. Elliott a proposed bill identical with the one introduced. Other bills introduced in Congress that appear to have been supported by the claimant were H. R. 1530 and S. 605 in the 75th Congress, and S. 2294 in the 76th Congress. H. R. 10641 in the 74th Congress would have required the Attorney General to secure and keep data and information relating to the quantity and value of lands granted to railroads, the manner in which the railroads disposed of the land, the revenues accruing to the Government because of these grants, and to protect the Government's interest in such lands; also to furnish Congress with such information as it might desire concerning the rights of the Government. By the time S. 2294 was introduced in the 76th Congress these duties would have been placed in the Department of the Interior. The Attorney General approved the general purpose of the legislation, but suggested that this Department did not seem to be the logical place for the accumulation of such information. (See the Attorney General's report dated June 29, 1937, with reference to H. R. 1530, 75th Cong., to the chairman of the Senate Public Lands Committee.) None of these bills was enacted.

In conflict with the bills mentioned in the preceding paragraph, H. R. 10620 was introduced on May 12, 1938 (75th Cong.), to remove existing reductions in compensation for transportation of Government property and troops incident to railroad land grants. The bill was the result of a recommendation contained in a report prepared by a special committee appointed by the President, which was composed of three members of the Interstate Commerce Commission. (Hearings, House Committee on Interstate and Foreign Commerce, H. R. 10620, 75th Cong., 3d sess., 1938. See also H. Doc. No. 583, 75th Cong., 3d sess., 1938, entitled "Immediate Relief for the Railroads.") Appearing before the committee were representatives of the railroad industry, railway labor unions, Government agencies with a primary interest in the bill, and the claimant. The Department of Justice was not requested to express its views. In his opposition to the bill the claimant did not mention the Northern Pacific case, but presented considerable historical data relating to subsidies given the railroads by the Government. His theory seems to have been that the Government's equity in the matter was of greater importance than the relief the railroads would receive if the bill became law. The committee made a favorable report on the bill, but it was not taken up by the House.

In December of 1938, some 5 months after the hearings on H. R. 10620, the President transmitted to the Department a memorandum prepared by Mr. Elliott which had been sent to the President by Senator Sheppard on November 14, 1938, relative to land-grant railroads. This memorandum did not mention the North-

ern Pacific case or suggest legislation that would require the railroads to relinquish any claims against the Government before receiving the benefit of any new rate structure Congress might provide for land-grant railroads. The President was advised on December 23, 1938, that such legislation should be enacted, and shortly thereafter the Attorney General in a letter dated January 31, 1939, to the chairman of the House Committee on Interstate Commerce suggested the legislation which became section 321 of the Transportation Act of 1940. (See hearings, Senate Committee on Interstate Commerce, S. 1915, S. 1990, and S. 2294, 76th Cong., 1st sess., 1939, particularly the testimony of Mr. E. E. Danly, Special Assistant to the Attorney General, and the hearings before the committee in the 76th Cong. on S. 1310, S. 2016, S. 1869 and S. 2009.) It does not appear from the transcript of these hearings or those held by the House Committee on Interstate and Foreign Commerce on H. R. 2531 and H. R. 4862 in the 76th Congress that Mr. Elliott either suggested or supported section 321. In fact, it would seem that he opposed it, as is stated by the Department of the Interior in its report.

EXHIBIT S

WASHINGTON, D. C., *July 29, 1953.*

SENATE JUDICIARY COMMITTEE,
United States Senate, Washington, D. C.
(Attention: Mr. Joseph Davis, Clerk.)

DEAR MR. DAVIS: I wish to give to you my unqualified endorsement of a private bill (S. 1687) now before your committee in behalf of Mr. T. C. Elliott of Daytona Beach, Fla.

I have known Mr. Elliott since April 1943. During 1943 and early in 1944, I worked with Mr. Elliott in studying the repeal of the land-grant rates given to the Government by the railroads for lands given to the Government. These reduced rates saved the Government millions of dollars. The railroad naturally wanted them repealed.

Mr. Elliott opposed this repeal for several years and in my opinion stopped passage of the bill between 1939 and 1943, thus saving the Government many millions during the early years of World War II. A number of Members of Congress joined in this work with Mr. Elliott during this period and, I believe, have made statements to that effect to your committee.

In March 1944, I continued this work for Mr. Elliott by appearing before the House Interstate and Foreign Commerce Committee in opposition to the repeal of these rates by giving the committee the facts as secured from Government reports which the railroads and the Government agencies did not present.

With the facts I secured from Mr. Elliott, I studied many Government reports together with the legal reports on land-grant rates and found that Mr. Elliott was fully justified in his contention. I found that no agency of the Government opposed repeal because they did not want to oppose the railroads for political reasons. These facts can well be verified by the many Members of the House and Senate who have endorsed this bill.

I feel that Mr. Elliott is entitled to consideration for his faithful service for he established a precedent which has now been recognized by law, namely, the act of August 2, 1946 (60 Stat. 809). This act provides for cash awards for employees making suggestions which will save the Government money. Mr. Elliott's tremendous savings cannot be recognized under the act since it was not retroactive.

For the above reasons and the facts as present by Mr. Elliott, I ask that you report the bill favorably for passage by Congress.

Sincerely yours,

LYMAN C. DELLE.

EXHIBIT T

WASHINGTON, D. C., *November 13, 1939.*

Subject: Railroad land grants.

HON. FRANKLIN D. ROOSEVELT,
President of the United States,
The White House, Washington, D. C.

MY DEAR MR. PRESIDENT: Reference is made to your letter of June 26, 1939, addressed to Senator Morris Sheppard concerning a memorandum which I had prepared on the subject of railroad land grants.

While I fully appreciate how valuable time is to you and how very busy you are, I also believe that when a proposition is involved that destroys an equity of the Government having a value of over $400 million you will not refrain from taking notice of it.

For your information I will briefly outline the present status of this Government land-grant proposition. During the past several years I have been in a position and have had an opportunity to observe and know of the activities and plans being pursued by the railroad leaders and companies toward having the Federal Government eliminate or forego its land-grant rights and equities.

Two bills, H. R. 10641 and H. R. 1530, each passed the House of Representatives in the 74th and 75th Congresses respectively, and had for their purpose the "Protection and conservation of the equities or rights of the Government resulting from railroad land grants." These bills did not get through the Senate. During the present session of Congress, Senator Sheppard has introduced a bill, S. 2294, which has for its object the same purpose as that contained in the bills which have twice passed the House of Representatives and it is now receiving consideration by the Senate Interstate Commerce Committee. This is the present situation as to the question of saving this $400 million equity from being destroyed.

In contrast to the foregoing, the railroad reorganization bill, S. 2009, has passed the Senate without the land-grant question being involved. However, the House of Representatives has rewritten or amended the Senate bill so as to include therein the elimination and destroying of the Government's land-grant rights and equities. This bill has passed the House with this amendment in it and has been referred to a conference committee.

So you may readily see that the Government's position with reference to forever losing these valuable equity rights is most precarious.

As was partly brought out in my memorandum transmitted to you on November 14, 1938, by Senator Sheppard and more fully outlined in my statement to the Senate Committee on Interstate Commerce in the hearings on bill, S. 2294, June 5, 1939, the whole history of the railroad's dealings with the Federal Government concerning land grants is replete with cases wherein they have misrepresented facts and have succeeded from time to time in fooling both Houses of Congress and the President into letting them get hundreds of millions of dollars and property by false representations. There is but little doubt but what the same thing is being done by the railraods in S. 2009 now pending before the Senate and House conferees.

For your further information, it is correct to advise that none of the executive departments have endorsed the bill or bills which provide for the elimination or destroying of the Government's land-grant rights and equities, but they have expressed opposition to such legislative action, and furthermore, such departments have expressed themselves as being specifically in favor of the enactment of the bill, S. 2294, introduced by Senator Sheppard.

In a letter addressed to Senator Burton K. Wheeler, chairman of the Interstate Commerce Committee on June 17, 1939, the Honorable M. L. Wilson, Acting Secretary of Agriculture stated:

"The action contemplated by bill S. 2294 should produce results beneficial to this Department in several different ways. An overall analysis of the distribution and disposal of that part of the 132 million acres which have passed to third parties definitely would contribute to the studies of this Department in the general field of land economy. More detailed knowledge as to the nature and distribution of the parts of the grants still held by the grantees or their subsidiary companies markedly would assist this Department in working out programs of land acquisition and management."

In a letter also addressed to Senator Wheeler in reference to S. 2294, Hon. Harold L. Ickes, Secretary of the Interior stated:

"I am in accord with the purpose of the bill and recommend that it be enacted into law."

Hon. John W. Haynes, Acting Secretary of the Treasury, in a letter to Senator Wheeler on June 19, 1939, referring to S. 2294 stated:

"The Treasury Department sees no objection to placing under the General Land Office, Department of the Interior, the conservation of the Government's rights arising from railroad land grants."

No comments have been made to the Senate Committee on Interstate Commerce by the War, Navy, Commerce, Post Office, or Labor Departments on bill S. 2294. The Justice Department merely stated that it was a matter pertaining to the Interior Department and it had no comments to offer thereon.

From the tone of your letter to Senator Sheppard on June 26, 1939, I gather that you are interested in this matter and that you will not consent to seeing this

valuable Government equity destroyed without just and reasonable cause, and it is from trying to prevent a grave wrong being done to the Government that I am prompted to again bring this matter to your attention.

The Sheppard bill, S. 2294, provides a consistent and practical manner of handling this whole land-grant matter by requiring that data and information be acquired before the Government takes action to destroy its rights. This bill should be enacted into law in lieu of the action contemplated by the provisions added by the House of Representatives and now before the conferees in S. 2009. If, in view of these circumstances, you can see your way clear to advise the conferees in S. 2009 to withdraw or eliminate the House amendment and in lieu thereof to either substitute the provisions of the Sheppard bill, S. 2294, or else allow the Sheppard bill to be enacted, it will likely have the effect of saving this valuable equity.

Yours very sincerely,

T. C. ELLIOTT.

EXHIBIT U

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., March 28, 1952.

Hon. JAMES HOWARD MCGRATH,
Attorney General, Department of Justice,
Washington, D. C.

MY DEAR MR. ATTORNEY GENERAL: This is in reply to Mr. Vanech's letter of January 30, 1952, relating to S. 2280, a bill for the relief of T. C. Elliott.

As he requests, there is enclosed a copy of the Secretary's letter of July 19, 1939, to the President commenting on Mr. Elliott's brief which had been sent to us by the President on April 6, 1939.

Mr. Vanech also asked for my comments on two statements by Mr. Elliott. In the first, he states:

"The legislation which was enacted on the recommendations of the Attorney General and Secretary of the Interior as a result of the memorandum prepared by me and transmitted by Senator Sheppard to the President required that all lands remaining unpatented by the railroads should come back to the Government and that all claims by the railroads against the Government concerning such lands should be canceled."

The records available in this Department do not support this statement. The memorandum sent by the President to us for comment was returned to the White House and no copy was kept here. Consequently we do not now know what that memorandum suggested. There is nothing to indicate that Mr. Elliott originated the suggestion, in the reply to the President, that if the Government's preferential rate was abolished, the grant lands should be returned to the Government.

A letter of November 13, 1939, from Mr. Elliott to the President (copy enclosed) indicates that the contrary might be true. In this letter, Mr. Elliott opposed section 321 of the bill (S. 2009) as it passed the House. Despite Mr. Elliott's opposition, this exact language was enacted in Public Law 785 (75th Cong.) on September 18, 1940. It did not carry out fully our suggestion of July 19, 1939, since it did not provide for the reconveyance of patented lands still held by the railroads, but merely provided for the release of unpatented claims in return for the abolition of the preferential Government rates.

During the 77th Congress, Mr. Elliott urged enactment of S. 1018 which would have required further study of the railroad grants (see letter of June 16, 1941, attached). The Department opposed the bill on the ground that section 321 of the Transportation Act of 1940 (49 U. S. C., 1946 ed., sec. 65) made such a study of little more than historical value.

Mr. Elliott's second statement is:

"At the time of enactment of this legislation the Northern Pacific Railroad had a claim against the Government for $10 million which had been approved by a Federal court and sustained by the court of appeals. This $10 million claim was canceled by the Northern Pacific."

When the Transportation Act of 1940 was enacted on September 18, 1940, litigation was pending between the United States and the Northern Pacific Railway Co. A Supreme Court decision of December 16, 1940 (*U. S.* v. *Northern Pacific Railway Co.* (1940) 311 U. S. 317), remanded the case in part for further

trial on some of the Government's contention. The Supreme Court decision did not mention the 1940 act.

A settlement of the litigation was later approved in 1941 in *U. S.* v. *Northern Pacific Railway Co.* ((1941) 41 F. Supp. 273). The company's release of its claims under the Transportation Act was a factor in the settlement (see p. 288). There is, however, nothing in our records to connect Mr. Elliott with this settlement.

The Department's records do indicate that Mr. Elliott had discussions regarding the railroad grants with people in the Department at least as early as February 1939. The records do not show, however, any suggestions made by Mr. Elliott other than those contained in the enclosed material.

Since Mr. Elliott clearly opposed section 321 of the Transportation Act of 1940, it is difficult to see how he can now take credit for its enactment. His claim may be that if it were not for him even more unfavorable provisions would have been enacted. If so, our records contain nothing to support such a claim, nor to conclusively refute it.

Sincerely yours,

DALE E. DOTY,
Assistant Secretary of the Interior.

EXHIBIT V

NAVY DEPARTMENT,
Washington, June 2, 1917.

The AUDITOR FOR THE NAVY DEPARTMENT,
Treasury Department:

In the matter of the classification of armor and deck plates in the western classification territory, which was discussed January 23 with the members of the Western Classification Committee in Chicago, under their docket No. 1000, by a representative of the Office of Solicitor, I desire to thank you for the data furnished in your communication of January 12, 1917 (file 1402-TCE) in connection therewith. The information was of great assistance in preparing the argument.

This Department asked for a reduction in classification of from third to fifth class, and the committee agreed to fourth class, but certain bids of the carriers, submitted sometime later, appear to have been based in the fifth class. Under reductions obtained, the saving in freight rate on armor and deck plates already contracted will amount to $200,000.

Very respectfully,

F. D. ROOSEVELT,
Acting Secretary.

EXHIBIT W

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., February 5, 1952.

Hon. J. HOWARD MCGRATH,
Attorney General of the United States,
Washington, D. C.

MY DEAR MR. ATTORNEY GENERAL: Reference is made to the letter of the Deputy Attorney General to the Secretary of the Navy dated October 29, 1951, which requested a report of the views of the Department of the Navy on the bill (S. 2280) for the relief of T. C. Elliott.

The bill would authorize the payment to Mr. Elliott of the sum of $15,000 for compensation for services rendered to the United States in addition to his official duties as a Federal employee, in preparing and furnishing rate and transportation information for committees and Members of the Congress, and for various other officials and agencies of the Government. The bill alleges that as a result, Mr. Elliott helped to save the United States approximately $15 million.

On the basis of copies of certain letters and memoranda furnished to this Department through the Department of Justice it appears that Mr. Elliott in the year 1907 and again during World War I, while employed in the Treasury Department, Office of the Auditor for the Navy Department (now the General Accounting Office), furnished the Department of the Navy with certain valuable rate and transportation information and data which resulted in savings to the Govern-

ment. The Department of the Navy, however, has no statistics available from which the estimated savings claimed in S. 2280 as a result of the services of Mr. Elliott can be verified.

In a report to the chairman, Committee on the Judiciary, United States Senate, on S. 2280 dated November 20, 1951, the Comptroller General of the United States advises that the benefits to the Government on certain transportation matters, brought about to a substantial degree through the efforts of Mr. Elliott, were the results of his efforts as an individual and private citizen and that it is believed that the services were performed without any thought at the time of receiving a monetary reward. The Comptroller General further expresses the view that legislation such as S. 2280 rewarding voluntary services by a public-spirited citizen would establish an undesirable precedent and for that reason favorable consideration of the bill is not recommended.

The Department of the Navy concurs in the foregoing views of the Comptroller General and, accordingly, does not recommend the enactment of S. 2280.

Sincerely yours,

G. L. RUSSELL,
Rear Admiral, United States Navy,
Judge Advocate General of the Navy
(For the Secretary of the Navy).

○

Calendar No. 682

84TH CONGRESS
1st Session

SENATE

REPORT
No. 677

UNIV. OF MICH.
JUL 7 1955
LAW LIBRARY

E. S. BERNEY

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3194]

The Committee on the Judiciary, to which was referred the bill (H. R. 3194) for the relief of E. S. Berney, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to confer jurisdiction upon the United States District Court for the District of Nevada to determine the amount, if any, due to E. S. Berney, of Fallon, Nev., for damages alleged to have been sustained by him as a result of representations made to him by Government officials that the Navy would take over his lands to be used as part of a bombing range on or before October 1, 1943.

STATEMENT

This claim was the subject of a private bill (S. 46) which passed both Houses of Congress during the 83d Congress, but was not approved by the President. In his memorandum of disapproval the President indicated that he felt that this matter was one which should be considered by a district court, and that he would be willing to approve legislation permitting adjudication by the appropriate district court. The committee recognizes that the facts in this case should be presented in a judicial proceeding so that the evidence can be properly weighed and determined in accordance with accepted judicial procedures. The bill would confer jurisdiction on the United States District Court for the District of Nevada, in accordance with the statement made in the President's message of disapproval.

The memorandum of disapproval and Senate Report 1229 of the 83d Congress, 2d session, are as follows:

MEMORANDUM OF DISAPPROVAL

I have withheld my approval from S. 46, entitled "For the relief of E. S. Berney."

This bill would pay to E. S. Berney the sum of $4,750 as compensation for damages allegedly sustained by him as a result of certain representations made by a representative of the Navy during World War II.

It appears that in the summer of 1943 a representative of the Navy discussed with the beneficiary the potential use of his Nevada ranch and certain adjoining ones as a bombing range. Although the evidence on this point is conflicting, it appears that such representative indicated that he expected the Navy to begin operations that fall and that, prior to the beginning of such operations, all livestock would have to be removed from the land. The beneficiary alleges that on the basis of this information he disposed of his cattle and other property and vacated his ranch early in the fall. It developed, however, that the Navy did not need or begin to use his land until the following spring.

In subsequent condemnation proceedings, the court refused to recognize any damages occuring prior to the time when the Navy began using the land in question in the spring of 1944. On this premise the court awarded the beneficiary $766.67 for damages occurring after use by the Navy began. The present bill was designed to afford compensation for damages which were excluded by the court and which the beneficiary alleges were due to the premature vacation of his land.

Conceding the facts in this case to be as stated by the beneficiary, it still does not follow that he is entitled to the award proposed here. It has not been established that the damages allegedly sustained by the beneficiary were due to a reasonable reliance upon the representations of the Navy representative. There appears to have been no such reliance on the part of other ranch owners whose land was taken under similar circumstances and whose statements appear in the committee reports in support of some aspects of the beneficiary's claim.

In addition, there appears to be confusion as to the basis for measuring the damages which the beneficiary allegedly sustained. He made an unverified claim of damages in the amount of $12,000. Part of the damages so claimed are covered by the $766.67 condemnation award. The Congress reduced the claim to $4,750, with no indication as to how this sum was arrived at.

From the foregoing, it seems to me that the record in this case is inconclusive both with respect to the merits of the beneficiary's claim and as to the damages which he may have sustained. These uncertainties compel me to withhold my approval from this bill.

I would, however, be willing to approve legislation which would permit adjudication of the case by the appropriate district court. Such legislation should authorize the payment to the beneficiary of such damages as the court might determine to be reasonably attributable to his reliance upon the alleged representations made to him by the Navy representative. I believe that only by such means can the rather obscure elements of this case be considered and resolved in a manner fair to both the Government and the beneficiary.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *September 1, 1954.*

[S. Rept. No. 1229, 83d Cong., 2d sess.]

STATEMENT

The claimant in this case states that about the 1st day of August 1943, he was approached by a commander in the United States Navy and advised that the Navy desired to take over land either owned or leased by him in Churchill County, Nev., for the purpose of using the land for a bombing range in connection with the training of naval aviators. The claimant states that he was informed by the Navy commander that the area in question would be put to this use on or before October 1, 1943. In pursuance of this conversation, in addition to correspondence with other officers of the Navy Department, the claimant sold or caused to be sold the cattle then grazing on the area in question and liquidated, insofar as it was possible, other property owned by him on the lands which were then in his possession or under his control. Such liquidation was completed on or about October 1, 1943.

It developed thereafter that the Department of the Navy did not actually enter upon the premises until on or about the 11th day of April 1944.

Thereafter, in accord with the practice at that time, condemnation proceedings were brought by the Government in connection with the taking of claimant's land, on or about the 11th day of April 1944. The case was not finally tried and decided until January of 1949, at which time claimant was allowed the sum of $766.67 as just compensation for the taking of his property. It has been stated that, "The court refused to consider any happening which occurred prior to the time of April 11, 1944, and no testimony was allowed on anything that happened prior to that date."

The claimant alleges that since he acted on the representation of an officer of the Navy that the area must be turned over to the Navy on or before October 1, 1943, he disposed of his holdings at a monetary loss approximating $12,000 and that the court, in considering the evidence in connection with the condemnation proceedings, considered that as of the time of the actual taking in April of 1944 that the land involved was abandoned property and thus awarded him as just compensation an amount which was grossly inadequate.

For the information of the Senate there is attached hereto a letter from the Office of the Deputy Attorney General of the Department of Justice, dated December 5, 1951. In addition, there are also attached affidavits executed by the claimant and other responsible persons in the area relating to the value of the property concerned in this bill. Also attached is the opinion of Hon. Roger T. Foley, United States district judge for the district of Nevada, in connection with the condemnation proceedings referred to above.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, December 5, 1951.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 1945) for the relief of E. S. Berney.

The bill would provide for payment of the sum of $12,000 to E. S. Berney, of Fallon, Nev., in full satisfaction of his claim against the United States for damages sustained by him as the result of representations made to him on or about August 1943, by responsible officers of the Department of the Navy to the effect that the Navy would take over his ranches to be used as part of a bombing range on or before October 1, 1943, with the result that he moved or sold his cattle and other property at a loss, when in fact, the Navy did not enter on such ranches until April 10, 1944, and for which losses he has never been compensated since the ranches were considered abandoned property in fixing compensation in the condemnation proceedings which followed.

In compliance with your request, a report was obtained from the Department of the Navy concerning this legislation. According to that report, which is enclosed, it appears that this claim is based on representations alleged to have been made to claimant by a Commander Chapman, formerly attached to the Naval Air Station, Alameda, Calif. With respect to the negotiations with Commander Chapman, the report states that claimant knew that the Navy did not plan to acquire his land in fee but intended only to acquire the right of use or occupancy for an indefinite period, that is, for the duration of the war and that it was decided, if feasible, to negotiate voluntary leases with the owners. Claimant in a written statement revealed that he was informed by Commander Chapman at the outset of the negotiations that Commander Chapman was not authorized to negotiate a lease in the matter, but that someone vested with that authority would call on claimant on or about October 1, following.

A statement made by Commander Chapman to Navy representatives who investigated this claim, was to the effect that he did not at any time make any representations to claimant that the Government had decided to take over his ranches on or before October 1943, or at any other time. The Department of the Navy states that most of the damages claimed fall within the category of so-called business losses or consequential damages which the courts have recognized are not compensable in condemnation proceedings by the Government.

Among these are the amounts listed as expenses of removing cattle from ranch, costs of breaking new cattle to pasture, and rental for ranch and range, and loss of income during the war.

In April 1944 the Government did condemn the use and occupancy of claimant's two ranches for periods terminating November 5, 1945, and July 30, 1946, respectively. The remainder of the claim for rehabilitation or restoration costs has already been adjudicated in that claimant has been awarded the sum of $350 by previous court action conducted after the termination of the periods for which condemned to cover damages to the premises resulting from the Government's use and occupancy.

The Department of the Navy states that in view of these facts it is opposed to the enactment of the bill.

The Department of Justice concurs in the views of the Department of the Navy.

The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Sincerely,

A. DEVITT VANECH,
Deputy Attorney General.

AFFIDAVIT

STATE OF NEVADA,
County of Churchill, ss:

E. S. Berney, being duly sworn, deposes and says:

That he is a resident of the county of Churchill, State of Nevada;

That he owned certain ranch rights and certain property rights in said county and State in the year 1943;

That your affiant avers that on or about the 1st day of August 1943, one Comdr. Thomas H. Chapman, of the United States Navy, advised your affiant that the United States Navy was going to take over the property owned by your said affiant in Dixie Valley, Churchill County, together with any and all range rights appurtenant thereto, and requested your affiant to remove all livestock in the said area on or before October 1, 1943. The said United States Navy Department by and through its authorized representatives further advised your affiant that the said Navy would be operating over the said area by that time.

Your affiant further avers that the said United States Navy did not commence operations until on or about the 11th day of April 1944.

Your affiant further avers that at the time of the conversation hereinbefore referred to your affiant discussed with the said naval representative the rental value of the property and was advised by the said representative that he had no authority to negotiate a lease, but that another representative of the United States Navy would soon contact your affiant together with other property owners in the area. However, no representative of the United States Navy appeared until the early spring of 1944, or about 6 months after your affiant had moved from the property.

Your affiant is informed and believes, and upon such information and belief alleges that as a result of your affiant's removal of his cattle from the said property approximately 6 months prior to the time that the United States Navy appraisers entered upon the property, it caused said appraisers to appraise said property as abandoned property;

That your affiant is further informed and believes, and upon such information and belief alleges, that one C. B. Stark, another property owner in the county of Churchill, with like property, received $1,500 per year for the summer range held and owned by the said C. B. Stark; that the said C. B. Stark was further given approximately $10,000 to assist in the drilling of wells for his winter range.

Your affiant further avers that condemnation proceedings were filed on the property hereinbefore referred to on or about the 11th day of April 1944, thus causing your affiant to employ counsel in an effort to protect his interest; however said case was not finally tried and decided until January of 1949 wherein your affiant herein was allowed $766.67 in the said decision by the said court. The court refused to consider any happening which occurred prior to the time of April 11, 1944, and no testimony was allowed on anything which happened prior to that date. The court also refused to consider rights of use of the range or damages as a result of loss of cultivated alfalfa land.

Your affiant further avers that the majority of the loss occasioned by him occurred prior to April 11, 1944; that as a result thereof there is no adjudication

of record establishing rights to compensation of your affiant for damages sustained by him as a result of naval operations in this area.

In witness whereof, your affiant has hereunto set his hand this 10th day of July 1951.

E. S. BERNEY.

Subscribed and sworn to before me this 10th day of July 1951.

[SEAL] M. CARMEN ERQUIAGA-BELL, *Notary Public.*

My commission expires October 27, 1952.

AFFIDAVIT

STATE OF NEVADA,
County of Churchill, ss:

Comes now your affiant, C. B. Stark, and deposes and says as follows:

That it was common knowledge in the county of Churchill, State of Nevada, on or about the fall of 1943, that stock then occupying the northeastern part of Churchill County and Dixie Valley, an area situate therein, would have to be removed from the said rangelands occupied by certain farmers living in said Churchill County;

That your said affiant moved his cattle that fall from the said area wherein he was entitled to range the said livestock;

That your said affiant sold approximately 300 head of cows and 2-year-old heifers that year which he had raised on the range, subject to the conferral of the United States Navy, due to the fact that the knowledge given him by the United States Navy necessitated said sale; subsequent thereto your affiant received from the United States Navy Department $1,500 per year rental for the range he occupied in the said area utilized by the said United States Navy for target purposes and also received from the said United States Navy Department the sum of $2,500 per year for the use of your said affiant's ranch when the Navy, by order issued from the United States Navy Department, took over the said property on or about the 1st day of July 1945;

That your affiant knows that the actual use of the said range by the Navy Department did not begin until some 6 months subsequent to the removal of the said cattle;

That your said affiant had a permit from the United States Grazing Service for about 500 head of livestock in the area utilized by the United States Navy for target purposes.

Wherefore, your affiant has hereunto signed these presents and avers that they are statements of fact known to him; that said request for the said signature was made by E. S. Berney as to the statement of facts existing with respect to your affiant.

In witness whereof, your affiant has set his hand this 9th day of July 1951.

C. B. STARK.

Subscribed and sworn to before me this 9th day of July 1951.

[SEAL] M. CARMEN ERQUIAGA-BELL, *Notary Public.*

My commission expires October 27, 1952.

AFFIDAVIT

STATE OF NEVADA,
County of Churchill, ss:

Comes now Ira Hamlin Kent, as president of the Kent Land & Livestock Co., a corporation existing by virtue of and under the laws of the State of Nevada, and deposes and says as follows:

That your affiant was contacted by Comdr. Thomas H. Chapman, of the United States Navy, on or about the month of July 1943;

That the said Commander Chapman advised your affiant herein that operations would begin at the Fallon Auxiliary Airbase on or about October 1, 1943;

That your affiant was further advised by the said Thomas H. Chapman that all livestock situate on the target areas belonging to the United States Navy were to be removed from that area for use of said target areas by the United States Navy which was proposed on or before October 1, 1943;

That your affiant further avers that owing to delay in construction of runways and barracks that the said actual operations on the said area hereinbefore referred to did not begin until April of 1944.

That the company represented by your affiant, and of which your affiant herein is president, was paid the sum of $1,500 as rental for the use of the range situate within the target area, and also the sum of $1,800 for any damage which might be done to springs existing on said range, together with any and all range operations which might be damaged by the United States Navy.

Your affiant avers that this affidavit is a statement of facts to the best of his knowledge and recollection; and that said statement of facts is given at the request of E. S. Berney.

In witness whereof your affiant has hereunto set his hand this 9th day of July 1951.

IRA HAMLIN KENT.

Subscribed and sworn to before me this 9th day of July 1951.

[SEAL] M. CARMEN ERQUIAGA-BELL, *Notary Public.*

My commission expires October 27, 1952.

[Case No. 339. Filed December 13, 1949. Amos P. Dickey, Clerk; by J. P. Fodrin, Deputy]

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA IN AND FOR THE DISTRICT OF NEVADA

* * * * * * *

UNITED STATES OF AMERICA, PLAINTIFF

v.

CERTAIN PARCELS OF LAND IN THE COUNTY OF CHURCHILL, STATE OF NEVADA; R. R. SPENCER, N. L. MERRITT, C. B. STARK, E. S. BERNEY, E. S. BERNEY, JR., RAMON ARRIZABALAGA, THOMAS ORMACHEA, C. SOLAMAN, JR., B. E. GALLIGER, KENT LAND & LIVESTOCK CO., FIRST NATIONAL BANK OF NEVADA, CALIFORNIA LANDS, A CALIFORNIA CORPORATION; STILLWATER FARMS; TRUCKEE CARSON IRRIGATION DISTRICT; SOUTHERN PACIFIC LAND CO., HAROLD PEER; CLARENCE ANDERSON; HENRY A. ANDERSON; C. R. CHALLSTROM, ALSO KNOWN AS ARTHUR CHALLSTROM; J. LINDEBERG; J. E. CHILBERG; C. W. DUNTON; COPPERIED IRON MINES, INC.; RESSIE CROXDALE; AND CHURCHILL COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; DEFENDANTS.

OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The most profitable use to which land can probably be put in the reasonably near future may be shown and considered as bearing upon the market value (*McCandless* v. *United States* (298 U. S. 342, 56 S. Ct. 764)). The most profitable use to which the defendant's lands could be put would be that of home ranches or basses of livestock-raising projects.

Availability of public grazing lands may be considered as an element in determining the fair market value of defendant Berney's lands. We are not determining compensation for loss of use of public grazing lands as the Court was asked to do in *Osborne* v. *United States* (145 F. 2d 892). Here we are endeavoring to ascertain the fair market rental value of privately owned lands.

Mr. Doren E. Woodward, a witness in behalf of plaintiff, considered availability of public grazing lands in forming his opinions as to the fair market value of defendant's lands. Transcript of Testimony (pp. 170, 173, and 174). If grazing lands were not available, he would estimate the value of parcel No. 1 at $1,000 (Transcript, p. 170). Considering availability of grazing lands with other elements, he found the fair market value of both parcels of defendant's lands to be $5,600.

Defendant Berney completed removal of his cattle from the public range land by December of 1943. He requests $1,400 as compensation to cover the expense of such removal. The order for immediate possession was not served upon defendant until April 1944. However, any payment to which defendant Berney might be entitled for losses suffered by enforced removal of cattle from the range could only be obtained through recourse to provisions of section 315q of title 43, United States Code Annotated, *Osborne* v. *United States*, supra

The trial of this action as to the lands of defendant E. S. Berney came on for hearing before the court without a jury, a jury having been waived by the parties, on November 12 and 13, 1947, and on January 21 and 22, 1948, the plaintiff appearing by its attorneys, John S. Halley, Esq., special assistant United States attorney, and Albert Lee Stevens, Jr., Esq.; and the defendant E. S. Berney appearing by his attorneys, A. L. Haight, Esq., George L. Sanford, Esq., and John R. Ross, Esq.; and the court being now fully advised as to all the matters and issues involved in the proceeding, now makes and files the following findings of fact and conclusions of law.

FINDINGS OF FACT

The court finds:

1. That this action was instituted on behalf of the United States of America, pursuant to and under the authority of the provisions of an act of Congress approved August 1888 (25 Stat. 357; title 40 U. S. C. sec. 257); the act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the acts of Congress approved July 2, 1917 (40 Stat. 241), and April 11, 1918 (40 Stat. 518; title 50 U. S. C. sec. 171), and March 27, 1942 (Public Law 507, 77th Cong.), and the act of Congress approved June 26, 1943 (Public Law 92, 78th Cong.).

2. That the Secretary of the Navy found and determined that it was necessary and advantageous to the interests of the United States to acquire a term for years beginning April 10, 1944, and terminating June 30, 1946, in and to the lands hereinafter described for use in connection with the establishment of an aerial-gunnery range.

3. That funds have been appropriated for the acquisition of the lands condemned and taken herein; that there are sufficient funds now available to pay whatever sum may ultimately be awarded and adjudged in this proceeding as just compensation, together with damages, if any, incident to the taking and condemnation thereof.

4. That the purposes for which the plaintiff was taking said lands, improvements thereon, and appurtenances thereto, were necessary and constituted a public use, and the use to which said property was applied was a use authorized by law, and that its acquisition by the plaintiff was of the greatest public benefit.

5. That the estate or interest in and to the lands hereinafter described which the plaintiff took, acquired, condemened, and held by this proceeding was a term for years beginning April 10, 1944, and terminating June 30, 1946, in and to said lands hereinafter described as parcel No. 1 and a term beginning July 1, 1945, and ending November 5, 1945, in and to the lands hereinafter described as parcel No. 2.

6. That the lands taken and condemned in this proceeding consist of those certain lots, pieces, and parcels of land, situate, lying, and being in the county of Churchill, State of Nevada, and more particularly described as follows:

Parcel No. 1.—SE¼ SE¼ sec. 12, T. 24 N., R. 36 E., of the Mount Diablo base and meridian; SW¼ SW¼ sec. 7, N½ NW¼ sec. 18, T. 24 N., R. 37 E., of the Mount Diablo base and meridian, containing 160 acres, more or less.

Parcel No. 2.—SW¼ NE¼ SW¼ SW¼ sec. 4; S½ SE¼ sec. 5; NE¼, NE¼, W½ E½ sec. 8; W½ NE¼ NW¼ SE¼, E½ NW¼, N½ SW¼ sec. 17; SE¼ SE¼ sec. 18, W½ NE¼ sec. 19, T. 22 N., R. 35 E. of the Mount Diablo base and meridian containing 760 acres, more or less.

7. That parcel No. 1, above described, known as Boyer Ranch, consisting of approximately 160 acres, was acquired by defendant E. S. Berney about February 1, 1940, and defendant Berney retained ownership in fee of said property until June 13, 1946.

Parcel No. 2, above described, known as Dixie Meadows, consisting of approximately 760 acres, was acquired by defendant E. S. Berney in 1941 and defendant Berney retained ownership in fee of said Dixie Meadows until June 13, 1946.

8. That the plaintiff acquired possession of parcel No. 1, the Boyer Ranch, on or about April 10, 1944, and relinquished possession thereof to defendant in January 1946.

9. That plaintiff acquired possession of parcel No. 2, the Dixie Meadows property, July 1, 1945, and possession thereof was returned to defendanct Berney November 1, 1945.

10. That the fair market value of parcel No. 1 as of April 10, 1944, is $2,600; and that the fair market rental value of parcel No. 1 from April 10, 1944, to January 1946, is $200 per year.

11. That the fair market value of parcel No. 2 as of July 1, 1945, is $3,000; and that the fair market rental value of parcel No. 2 from July 1, 1945, to November 1, 1945, is $200 per year.

12. That during plaintiff's occupancy the properties of defendant had been damaged as follows: Several windows broken, a portion of roof blown away or removed, and some fencing broken or removed, and 15 trees on said properties died during plaintiff's occupancy; and that the value of said trees was $150 and the cost of replacing and repairing the roof, windows, and fencing was $200.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing findings of fact, the court decides:

1. That defendant E. S. Berney is entitled to recover from plaintiff for the use and occupancy of parcel No. 1 the sum of $350 with interest at the rate of 6 percent per annum, until paid, as follows: On $200 of said sum of $350 from April 10, 1944; and on $150 of said sum of $350 from April 10, 1945.

2. That defendant E. S. Berney is entitled to recover from plaintiff for the use and occupancy of parcel No. 2 the sum of $66.67 with interest at the rate of 6 percent per annum from July 1, 1945, until paid.

3. That defendant E. S. Berney is entitled to recover from plaintiff for the injuries to said premises during plaintiff's occupancy thereof the sum of $350 with interest from November 1, 1945, at the rate of 6 percent per annum, until paid.

Let judgment be entered accordingly.

Dated this 13th day of December A. D. 1949.

ROGER T. FOLEY,
United States District Judge.

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Calendar No. 683

84TH CONGRESS, 1st Session | SENATE | REPORT No. 678

JOHN LLOYD SMELCER

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3271]

The Committee on the Judiciary, to which was referred the bill, (H. R. 3271) for the relief of John Lloyd Smelcer, having considered the same, reports favorably thereon, without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this purposed legislation is to authorize and direct the Secretary of the Treasury to pay $29,537.75 to John Lloyd Smelcer, Midway, Tenn., in full settlement of all claims against the United States, arising by reason of losses sustained by him, when, at the insistence of the contract representatives of the Government and officials of the Smaller War Plants Corporation, and upon their assurance that he would be reimbursed for any losses occasioned thereby, he entered into the production of base-closing plugs for fragmentation bombs during World War II. This sum, $29,537.75, the Court of Claims in its findings of fact, January 11, 1955, decided in equity and good conscience the claimant was entitled to be paid.

STATEMENT

The claimant, John Lloyd Smelcer, is a resident of Midway, Greene County, Tenn. Prior to World War II, Mr. Smelcer was operating a foundry for the casting of small parts in brass and iron, and also operating a machine shop under the name of the Warrensburg Foundry.

During World War II, claimant entered into the production of base-closing plugs for fragmentation bombs.

In the 81st Congress, 2d session, H. R. 5250 was introduced. This bill sought to pay the claimant, doing business as the Warrensburg Foundry, $49,875.42 for losses sustained by claimant when, at the insistence of contract representatives of the Government and officials of the Smaller War Plants Corporation, and upon their assurance he would be reimbursed for any losses occasioned thereby, he entered into the production of the aforesaid base-closing plugs for fragmentation bombs to be used by the United States Army Ordnance Department. Subsequently, Senate Resolution 335, 81st Congress, 2d session, passed the House of Representatives May 2, 1950. This Senate resolution in substance provided that H. R. 5250, together with all the accompanying papers, be referred to the Court of Claims, whereupon the court should proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report to the Senate at the earliest practicable date, giving findings of fact and conclusions thereon sufficient to inform the Congress of the nature of the demand as a claim, legal or equitable, against the United States and the amount, if any, legally, or equitably due from the United States to the claimant.

The facts available to this committee are fully set forth in the opinion of the United States Court of Claims pertaining to this claim, attached to this report.

Briefly, the findings of the Court of Claims reveal that this claimant while intensely patriotic, and a hard worker, was neither too highly educated nor was he too shrewd a businessman. During World War II, the claimant sought information from the Smaller War Plants Corporation as to how he might obtain Government work. In turn, the Smaller War Plants Corporation attempted to assist the claimant in making bids, and in giving him other instructions in connection with such contracts. The claimant was apparently under the impression that if he entered into such contracts the Government would indemnify him against any loss from the venture, although there is no evidence that anyone connected with the Government had any authority to make such a guaranty to the claimant, nor is there any evidence that such a guaranty was made, although the Court of Claims is of the impression a Mr. Neff, connected with the Smaller War Plants Corporation, ambitious to enlist as many small businesses as possible in the war effort (in the words of the court), "may have oversold the plaintiff on being indemnified against losses." (See finding 18.)

In any event the parts for these fragmentation bombs which the claimant contracted with the Government to deliver were much needed at the time. The claimant worked from 12 to 16 hours per day, 7 days a week on this job, placed a cot in the shop and slept there so as to be available at all times. Likewise, claimant's wife devoted an average of 4 to 6 hours a day on the job. From December 1, 1943, until November 24, 1944, claimant had 4 orders for these base-closing plugs for bombs, at a unit price of $0.23 each; 1 order for 125,000, a second for 75,000, a third for 50,000, and a fourth for 60,000 of such plugs. Thirty-eight months were required to fill these orders. The claimant filled these orders and performed his work satisfactorily. In payment therefor, claimant received $103,900.19. The claimant's costs, however, were $107,873.55, with a loss to claimant thereon of $3,973.36. (See finding 23.) In addition, neither the claimant nor his wife drew any compensation for their services during this 38-month

period. Neither did either of them draw an allowance during this period of time.

The Court of Claims at the very outset of its opinion admits this is a case where there is no legal liability. Nevertheless, the Court of Claims is of the opinion that in equity and good conscience and fair dealing the claimant should be paid the sum of $20,000 in appreciation of the patriotism and services rendered during this 38-month period. Likewise the Court of Claims feels it proper to allow a part or all of $9,537.75, a loss which claimant sustained on certain machinery which was useful to him only during the war period ($11,537.75 original cost minus $2,000 after-war scrap value.) (See finding 24.) The two items total $29,537.75, the amount sought by this bill.

This figure, $29.537.75 is materially lower than the $49,875.52 sought by H. R. 5250, 81st Congress, 2d session. Therefore, in view of the fact that the Court of Claims has heard evidence at length on this matter before rendering its opinion, the committee recommends that H. R. 3271 be reported favorably.

There is on file with the committee evidence relative to services performed by the attorney in connection with the prosecution of this case in the Court of Claims. The committee in this instance is of the opinion that attorney fees should be allowed.

Attached hereto is the opinion of the United States Court of Claims in connection with this proposed legislation.

IN THE UNITED STATES COURT OF CLAIMS

No. Cong. 17864

(Decided January 11, 1955)

JOHN LLOYD SMELCER v. THE UNITED STATES

Mr. Howard F. Jarvis for the plaintiff.

Mr. John R. Franklin, with whom was *Mr. Assistant Attorney General Warren E. Burger*, for the defendant.

OPINION

JONES, *Chief Judge*, delivered the opinion of the court:

This is one of the rare cases in which there is no legal liability, but in which the ends of justice require that some payment be made, since the defendant received the benefits of the work, which was manifestly performed at a loss.

The facts as developed at a full hearing are as follows:

1. The plaintiff, John Lloyd Smelcer, is a resident of Midway, Greene County, Tennessee, and prior to World War II was operating under the firm name of Warrensburg Foundry, a business confined to the casting of small parts of brass and iron for farmers and small industries located in the vicinity of Midway and to the operation of a small machine shop. The Warrensburg Foundry was located on the plaintiff's father's farm and was established about 1932. In 1942 the machine shop was worth about $10,000.

2. Senate Resolution 335, 81st Congress, 2d session, referring this claim, reads as follows:

"*Resolved*, That the bill (H. R. 5250) entitled 'For the relief of J. L. Smelcer', now pending in the Senate, together with all the accompanying papers, is hereby referred to the Court of Claims; and the court shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28 of the United States Code and report to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States and the amount, if any, legally or equitably due from the United States to the claimant: *Provided, however*, That the passage of this resolution shall not be construed as an inference of liability on the part of the Government of the United States."

H. R. 5250, 81st Congress, 2d session, referred to in the above resolution reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled*, That the Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to J. L. Smelcer, doing bsuiness as the Warrensburg Foundry, Midway, Tennessee, the sum of $49,875.42. Payment of such sum shall be in full settlement of all claims of the said J. L. Smelcer against the United States arising by reason of losses sustained by him when, at the insistence of contract representatives of the Government and officials of the Smaller War Plants Corporation, and upon their assurance that he would be reimbursed for any losses occasioned thereby, he entered into the production of base closing plugs for fragmentation bombs: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

"Passed the House of Representatives May 2, 1950."

3. Plaintiff received a subcontract from the Walters Machine Shop dated December 1, 1943, for 125,000 base-closing plugs, complete with setscrews inserted and zinc plating, at a unit price of $0.23 each, deliveries to be made over a 5-month period from December 1943 to April 1944. It appears further that the Walters Machine Shop, Morristown, Tenn., had a subcontract with the Alabama Pipe Co. at Anniston, Ala.

The base-closing plug was a small machined fitting which was intended to become part of a 22-pound general-purpose fragmentation bomb for the United States Army Ordnance Department.

4. As of June 12, 1944, the Walters Machine Shop again subcontracted to the plaintiff an order for 75,000 base-closing plugs at a unit price of $0.23 each, deliveries to be made 25,000 per month beginning July 1944. From the purchase order itself it would appear that this order related to a different Government contract from the previous order but appears to have concerned the same item destined for the same purpose.

5. By purchase order of October 16, 1944, the Walters Machine Shop ordered from the plaintiff 50,000 base-closing plugs at a unit price of $0.23 each, to be shipped in the months of October, November, and December.

6. By purchase order of November 24, 1944, the Walters Machine Shop ordered from the plaintiff 60,000 base-closing plugs at a price of $0.23 each, delivery to be made 20,000 per month beginning January 1945.

7. The above four purchase orders or subcontracts were all that the plaintiff had with reference to the base-closing plugs.

8. In addition, the plaintiff performed wartime work for the Knoxville Iron Co., Knoxville, Tenn., and the Alabama Pipe Co., Anniston, Ala. Plaintiff also held a small contract with the United States Maritime Commission. These contracts were not for the base-closing plugs.

9. Plaintiff performed all of this work satisfactorily and has been paid the contract price therefor. Such work was performed over a period of 38 months, beginning in April 1942.

10. While the reference set out hereinabove in finding 2 involves only losses in the production of base-closing plugs for fragmentation bombs, plaintiff's claim in the petition in this case is for his losses on all war contracts. It is impossible from his records, or from the proof herein, to segregate plaintiff's costs in the production of base-closing plugs from his costs on all war work.

In fact, plaintiff performed during the period involved, private work for which he received $9,398.29. Plaintiff's costs on this private work cannot be segregated accurately, and his costs have accordingly been prorated on the basis of his receipts.

If a similar allocation of costs to base-closing plugs and other war works is desired, the plaintiff's receipts therefrom were respectively $74,175.15 and $29,384.04.

11. Plaintiff was not highly educated, nor was he a shrewd businessman. However, he had five cousins in the military service and was anxious to get into war work and assist in the war effort. During the performance of such war work, plaintiff borrowed heavily from his father and others, and at the end of the war had become indebted to his father in the sum of $46,000, which sum he still owes.

12. The officials of the Smaller War Plants Corporation, and particularly Stewart S. Neff, district manager in Knoxville, Tenn., were anxious to enlist in

the war effort as many small businesses as possible. Mr. Neff assisted plaintiff in securing contracts for war work and assured him that the Government would not let him lose money on them. He told him that he would not be guaranteed a profit, but would not be allowed to incur a loss. Such advice was also given by Army and Navy officers, in a liaison capacity with the Smaller War Plants Corporation, who visited plaintiff's machine shop. It does not appear that either Mr. Neff or any of the other officers who talked to plaintiff had any authority to guarantee him on behalf of the defendant against losses on his Government contracts. But it does appear that plaintiff believed that they had such authority and relied thereon.

13. Under the first purchase order or subcontract of December 1, 1943, plaintiff appeared to be making a profit and he has so conceded. However, by 1945 the plaintiff had begun to feel the effects of increased costs of performance.

Sometime in the year 1945 and prior to June of that year, plaintiff talked with an official of the Army Ordnance at Birmingham, Ala., with reference to possible relief on his subcontracts for the base-closing plugs for that department.

Plaintiff, however, did not file a claim or request for relief during the war nor did he file one with the Department of the Army after the war.

It appears that plaintiff filed a written claim with the Walters Machine Shop which at the time of the trial of this case was involved in separate litigation with plaintiff. Plaintiff may have also filed a termination claim with the Walters Machine Shop in connection with plaintiff's purchase order of November 24, 1944, which had been terminated June 29, 1945. Plaintiff received payment in connection with this termination claim.

14. At the time plaintiff accepted the order of June 12, 1944, the second purchase order from Walters, plaintiff asked for a higher price but the order was awarded at the figure $0.23 each. Walters apparently informed plaintiff that he would take the question of an adjustment of the purchase price into consideration and would make further representation to the prime contractor. Whether this was ever done has not been shown.

Toward the end of the war plaintiff went to see Mr. Neff to complain that he was losing money. Apparently plaintiff had closed his plant at one time. Plaintiff appears to have closed down his business because of his feeling that he was losing money, and also on account of the requirements of the wage-and-hour laws which Government officials had informed him he would have to observe. Plaintiff had not been paying the men overtime.

15. Plaintiff says that his acceptance of the second purchase order was made with the knowledge that he was losing money at that time, but that he relied upon certain assurances received from the Smaller War Plants Corporation to take care of the matter after the war.

16. Plaintiff asked Smaller War Plants how he might obtain Government work. In addition, Smaller War Plants Corporation went into the contracts and attempted to assist plaintiff in making his bids and also warned the contractor to be sure of his costs. Mr. Neff's connection with Smaller War Plants ended shortly after June 1944.

Walters had the right under his general contract to negotiate with any subcontractor he desired.

17. The Smaller War Plants Corporation assisted the plaintiff in locating war work and in locating and leasing equipment for his machine shop. Plaintiff leased several pieces of equipment from the Smaller War Plants Corporation. Because he fell behind in rentals, the Reconstruction Finance Corporation filed a suit against plaintiff for the rental of its lathes. His answer filed in this action showed that plaintiff entered into an agreement and lease May 12, 1944, for the rental of one lathe, later supplemented to cover two additional ones. Plaintiff appears to have been under the impression the rental would be 1¼ percent per year on the appraisal value of the lathes. However, as he later found out, the rental was 1½ percent per month. Rental was paid up to October 1945, although the lathes were not used after August 16, 1945. In September 1945, plaintiff advised Smaller War Plants Corporation that he had no further use for the lathes but was interested in purchasing them provided he could secure a loan to cover the purchase price.

18. There was no directive to the Smaller War Plants Corporation by which they could guarantee smaller manufacturers against losses under their contracts. Mr. Neff did not make a guaranty in this sense. However, he did recognize an obligation on his part to assist plaintiff in the preparation of his bid for this work. He was ambitious to enlist as many small businesses as possible in the war effort, and he may have oversold the plaintiff on being indemnified against losses.

19. The ascertainment of the amount of plaintiff's loss in the performance of his war contracts presents considerable difficulty. As stated above, the plaintiff

was not a businessman, nor familiar with methods of accounting. His job records were scanty and fragmentary, consisting largely of canceled checks, bank statements, some invoices, and payroll records covering a part of the performance period. These records have been subjected to examination by accountants for both parties and their results are considerably divergent.

20. The accountant for neither party has been able to account for the loss in the conduct of plaintiff's business of any such amount as the $46,000 borrowed from plaintiff's father. During the 38 months during which the performance of the war contracts was in progress, plaintiff drew from the business no salary or allowances. It must have cost him and his family something to live during this period, and the use of a part of the $46,000 is undoubtedly accounted for in this way.

21. Plaintiff's accountant arrived at a loss on the war contracts of $15,727.02 before any salary allowances to plaintiff and his wife. The defendant's accountant, on the other hand, finds a profit of $21,060.87. The difference is accounted for in several ways. Plaintiff purchased some $17,682.75 worth of equipment for the performance of the war work. Plaintiff's accountant has charged this entire cost as an expense. Defendant's accountant, on the other hand, has found only $6,148.00, being chiefly depreciation at 20 percent a year on such equipment for 38 months. Since completion of his war work plaintiff has had no further need for such equipment.

22. A further difference in the results arrived at is due to the fragmentary nature of plaintiff's records, and the difficulty, from an accounting standpoint, of attributing certain expenditures to definite objectives. Throughout the record, the plaintiff has amply demonstrated not only his patriotism but his inherent honesty, and consequently his testimony regarding such disputed items has been accepted.

23. The financial results of plaintiff's performance of war work are set out below:

Plaintiff's revised claim, as shown by his suggested findings of fact, sets out costs of all work during the period of war contract performance of $129,165.99. The difference between the sums for new equipment referred to in finding 21 is $11,534.75.

Plaintiff performed during said period of 38 months, private work for which he received $9,398.29. Plaintiff believes he performed such work at a loss, but at a loss smaller than his loss on war work. It is impossible from plaintiff's records to segregate the costs on such private work, but if its cost was comparable to the cost of the war work, it amounted to $9,757.69.

Deducting these two items from plaintiff's stated costs therefore leaves the sum of $107,873.55 as the cost of performance of war work for which plaintiff received the sum of $103,900.19, or a loss thereon of $3,973.36.

Included in the latter sum are certain items which the defendant's accountant eliminated, as follows:

Interest on note	$1,621.94
Interest on notes	530.65
Dues and subscriptions	370.00
Accounting fees	187.00
Total	2,709.59

These are items which would not have been incurred by the plaintiff but for the war work.

As stated above, neither plaintiff nor his wife drew any compensation for their services. Plaintiff worked very hard on the job, devoting from 12 to 16 hours a day, 7 days a week thereto. He placed a cot in the shop and slept there so as to be immediately available at all times. Plaintiff's wife devoted on an average of 4 to 6 hours a day to the job.

If plaintiff and his wife are to be compensated for their work, $350 per month to the plaintiff and $100 per month to the plaintiff's wife, for the 38 months of war contract performance seem reasonable.

24. Whether or not the defendant may be indebted in law or equity to the plaintiff in any amount, a payment to him and his wife of $20,000 would not be inappropriate as a concrete expression of defendant's appreciation for his patriotism and services.

25. In addition, some relief might be accorded plaintiff for the undepreciated cost of the equipment purchased specially for performance of war contracts and no longer of any use to plaintiff, amounting to $11,537.75, and having scrap value of only $2,000.

26. Perhaps plaintiff's patriotism and honesty, and the plight to which they have brought him are best shown by his own words found in the colloquy on pages 164 and 165 of volume I of the testimony, as follows:

"254. Q. Is there anything else you would like to tell Mr. Vance about this that I haven't asked you about?

"A. I have told you about all I know to tell, but as I said before, I relied on the honesty of our Government agency, and it seems that somebody slipped somewhere because I didn't have no authority. I didn't know at the time that Mr. Neff or anyone connected with it didn't have any right to guarantee me anything.

"255. Q. As far as you know they did have?

"A. Yes, and on the other hand I expect I would have went ahead and made the parts if it killed me because I had five cousins across the water, and I don't know whether they would have ever come back or not but for some fellows like myself, but anyway, the war is over and I have not been too good a businessman."

While the facts do not bring the case strictly within the Lucas Act, it is substantially within the purview of that statute and falls within the purposes which Congress evidently had in the enactment of that measure.

Plaintiff worked 7 days a week, 12 or more hours per day. He produced much-needed supplies on time.

While the losses were no doubt greater, there is satisfactory evidence that they were at least $3,973.36. Since he received nothing for the 38 months' faithful work of himself and his wife, it is manifest that some compensation should be allowed on that account.

We think that in equity, good conscience, and fair dealing plaintiff should be paid the sum of $20,000.

We recommend to the Congress that provision be made for such payment.

We think it would also be proper, in addition, that plaintiff be allowed a part or all of the $9,537.75 loss which he sustained on the machinery which was useful to him only during the war period.

LARAMORE, *Judge;* MADDEN, *Judge;* WHITAKER, *Judge;* and LITTLETON, *Judge,* concur.

Calendar No. 684

84TH CONGRESS, 1st Session | SENATE | REPORT No. 679

HAROLD SWARTHOUT AND L. R. SWARTHOUT

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 476]

The Committee on the Judiciary, to which was referred the bill (S. 476) for the relief of Harold Swarthout and L. R. Swarthout, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 10, strike out the figure "2" and insert in lieu thereof the figure "3".

PURPOSE OF AMENDMENT

The purpose of the above amendment is to set forth the date when the injury occurred as recited in the bill to conform with the date the injury actually occurred as it repeatedly appears in the data set forth in the report which accompanies this proposed legislation.

PURPOSE OF THIS LEGISLATION

The purpose of this proposed legislation, as amended, is to provide for the payment to Harold Swarthout of the sum of $10,000 in full satisfaction of his claim against the United States for compensation for permanent injuries sustained as a result of the severe burns he received when an Army practice bomb exploded when accidentally dropped; and to pay to L. R. Swarthout, of Burns, Oreg., father of Harold Swarthout, the sum of $4,625.20 in full satisfaction of his claim against the United States for reimbursement of medical, nursing, hospital, and other expenses incurred by him on account of the injuries so sustained by Harold Swarthout.

STATEMENT

A similar bill, S. 1022 of the 83d Congress, 1st session, was reported favorably from this committee on July 19, 1954, and passed the Senate, August 12, 1954. The facts relating to this claim are more fully recited in the data attached to and made a part of this report. Here, they may be summarized as follows:

On the afternoon of April 3, 1943, the claimant, Harold Swarthout, then a child of 10 years, while playing with other children, in the yard of a neighbor, dropped a bomb, which exploded and caused him to be severely burned.

These burns covered most of the boy's arms, the entire front of his chest, his right side, extending around almost to the middle of his back, over the front of his neck, extending up onto the lower portions of the child's face.

Harold Swarthout remained in the hospital almost 3 months after the accident occurred.

The year following this accident, scar contractures of the right elbow and the right side of the neck were surgically corrected.

Five years after the injury, further surgical correction was performed to allow adequate function of the right elbow and neck.

Despite the corrective surgery just related, the claimant, when examined in July 1952, 9 years after this injury, still revealed a discolored old burn scar of the middle third of the right arm, a thicker scar extending down the right elbow. There also are thick, raised overgrowths of scar tissue on the surface of the chest and lower neck extending into the right side of the upper neck in the area of the body of the right jaw. There is speculation as to performance of additional plastic surgery.

The accident which resulted in the injuries here described occurred in the following manner:

On April 2, 1943, a Mr. and Mrs. William Hickey, together with their two minor sons, stopped at an abandoned farmhouse while en route to Burns, Oreg. Near this abandoned house they discovered three practice bombs of the type then used by the United States Army Air Corps for training purposes. A container, which when filled, holds some 3 pounds of black powder is fitted into the end of this type of bomb, which is known as a spotting charge. Upon impact, it is supposed to explode and thereby indicate to observers the place where the bomb lands. Each of the three bombs when found by Mr. and Mrs. Hickey had been crushed and broken open on the nose end.

Mrs. Hickey, desiring to use one of the bombs as a flower pot, picked out the one least damaged, whereupon, Mr. Hickey threw the bomb in the truck and they proceeded on their journey. When they arrived home, Mr. Hickey threw the bomb off the truck onto the ground. At that time, the crushed tail assembly was hanging on the end of the bomb by one corner. This assembly apparently was removed sometime during the next day. The next morning, the two minor sons of the Hickeys informed Harold Swarthout, a neighbor boy, that they had a bomb in their yard. After looking at the bomb in the morning without touching it, Harold returned to the Hickey yard in the afternoon in the company of the younger Hickey boy and three other boys. While all the boys were playing with the bomb, Harold Swarthout dropped it, and the bomb exploded with the injuries to claimant resulting which have been here related.

A suit was instituted by L. R. Swarthout as guardian ad litem for his minor son, Harold Swarthout, this claimant, against Mr. and Mrs. Hickey in the circuit court of Harney County, Oreg., to recover damages on the ground of negligence. Trial before a jury, however, resulted in a verdict for the Hickeys.

Thereafter, upon inquiry made by a law firm representing these claimants, the legal officer of the division engineer's office, Portland, Oreg., advised that no action could be maintained by L. R. Swarthout on behalf of his minor son against the United States under the Federal Tort Claims Act for the reason that the injury occurred before January 1, 1945, the effective date of this act.

The Department of the Army reports that the three bombs mentioned were not found by the Hickeys within an Army practice area. Neither is there anything in the Army's records to show how the bombs came to be located near this abandoned farmhouse where they were found, nor who placed them there. Notwithstanding this, the type of bombs indicates they were dropped by members of the United States Army Air Corps. That they were found near an abandoned house (a likely target for practicing airmen), together with the fact that the noses of the bombs were crushed and broken open indicates these bombs were dropped from one or more airplanes.

The American Law Institute's Restatement of the Law of Torts defines an activity as ultrahazardous if it (*a*) necessarily involves a risk of serious harm to the person * * * of others which cannot be eliminated by the exercise of the utmost care, and (*b*) is not a matter of common usage. Such an activity is distinguished from negligence or nuisance because the activity is of such utility the risk unavoidably involved in carrying it on cannot be regarded as so unreasonable as to make it negligent. Within this category, according to the American Law Institute's Restatement, is included the transportation of explosive substances, the reason being that no precautions and care can make it reasonably certain they will not explode and for the further reason that the harm resulting from such an explosion is almost certain to be serious. Moreover, the restatement further holds one carrying on an ultrahazardous activity is liable for harm although it is caused by the unexpectable innocent, negligent or reckless conduct of a third person.

In view of this position adopted by the American Law Institute in its restatement, the Department of the Army states it may properly assume liability in spite of its belief that the Hickeys were negligent, since the Department feels the injury to Harold Swarthout resulted from an ultrahazardous noncombat activity of the Army.

On the subject of contributory negligence as it relates to an ultrahazardous activity, the American Law Institute in its Restatement of the Law of Torts holds that a plaintiff is not barred from recovery for harm done by the miscarriage of an ultrahazardous activity by his intentionally coming into the area which would be endangered by its miscarriage. Further, a plaintiff is barred from recovery if, but only if, (*a*) he intentionally or negligently causes the activity to miscarry, or (*b*) after knowledge that it has miscarried or is about to miscarry, he fails to exercise reasonable care to avoid harm threatened thereby.

Remembering the claimant, Harold Swarthout, at the time this injury occurred was a minor, the standard of conduct prescribed by the American Law Institute in its restatement is the standard of

conduct to be expected from a child of like age, intelligence, and experience.

Cognizant of this test, the Department of the Army takes the view that the conduct of Harold Swarthout is not considered to have been contributorily negligent under the circumstances of the instant case.

It is the further view of the Department of the Army that an award in a reasonable amount should be granted for the benefit of Harold Swarthout on account of injuries sustained by him as a result of this explosion, and that L. R. Swarthout should be reimbursed for the medical, hospital, and incidental expenses which he has incurred, or will be required to incur as the result of injury to said boy.

The Bureau of the Budget has no objection to the submission of the report of the Department of the Army.

There is on file with the committee evidence relative to services performed by the attorney in connection with the prosecution of this case in the State court. The committee in this instance is of the opinion that attorney fees should be allowed.

The committee, after careful consideration of all the facts presented, therefore recommends that this bill, S. 476, as amended, be favorably reported.

PORTLAND, OREG., *May 14, 1954.*

Re L. R. Swarthout

Senator WAYNE L. MORSE,
Senate Office Building, Washington, D. C.:

Additional plastic surgery not performed due to lack of funds. Estimated cost heretofore furnished. Best of luck.

Regards,

R. E. KRIESIEN.

DEPARTMENT OF THE ARMY,
Washington, D. C., July 21, 1953.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR SENATOR LANGER: There was referred to the Department of the Army, for consideration and direct reply to you, the request made by you upon the Attorney General for the submission to your committee of a report on the merits of S. 1022, 83d Congress, a bill for the relief of L. R. Swarthout and the legal guardian of Harold Swarthout.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, (1) to the legal guardian of Harold Swarthout, a minor, the sum of $ ——— in full satisfaction of the claim of the said Harold Swarthout against the United States for compensation for permanent injuries sustained as a result of the severe burns he received when an Army practice bomb that he was examining, while playing in the yard of a neighbor on April 2, 1943, exploded when accidentally dropped, and (2) to L. R. Swarthout, of Burns, Oregon, father of the said Harold Swarthout, the sum of $5,260.20 in full satisfaction of his claim against the United States for reimbursement of medical, nursing, hospital, and other expenses incurred by him on account of the injuries so sustained by the said Harold Swarthout."

The evidence in this case shows that on April 2, 1943, while William Hickey, an employee of the Division of Grazing, Department of the Interior, and his wife, Mrs. Dorothy Hickey, were traveling in a truck in the vicinity of the town of Fife, Crook County, Oreg., on their way from said town to their home in Burns, Oreg., they stopped at an abandoned house a short distance off the road on which they were traveling. Near this abandoned house they discovered three practice bombs. The evidence indicates that these practice bombs were of the 100-pound M-38A2 type then in use by the United States Army Air Corps for training purposes. The main body of this type of bomb is filled with sand,

and 3 pounds of black powder in a container approximately 10 inches long and 4 inches in diameter is inserted in the tail end of the bomb. This black powder, an explosive, is referred to as a spotting charge. Upon impact it is supposed to explode and thereby indicate to observers the place where the bomb lands. Each of the three bombs found by Mr. and Mrs. Hickey had been crushed and broken open at the nose end. Mrs. Hickey, desiring to use one of the bombs as a flowerpot, picked out the one which was least damaged, whereupon, Mr. Hickey threw the bomb in his truck and they proceeded homeward. When they arrived at home Mr. Hickey threw the bomb off the truck onto the ground. At this time the tail assembly, which was crushed, was hanging on the tail end of the bomb by one corner. The tail assembly apparently was removed sometime during the next day. The next morning (April 3, 1943) the two minor sons of Mr. and Mrs. Hickey informed a neighbor boy, Harold Swarthout, the 10-year-old son of Mr. and Mrs. L. R. Swarthout, that they had a bomb in their yard. After looking at the bomb that morning, without touching it, Harold Swarthout returned to the Hickey yard late in the afternoon of the same day in the company of the younger Hickey boy and three other boys. While all the boys were playing with the bomb Harold Swarthout dropped it. The bomb exploded and young Swarthout was severely burned.

The place where Mr. and Mrs. Hickey found the aforesaid three bombs was not within an Army practice area. There is nothing in the records of the Department of the Army which definitely establishes how these bombs came to be near the abandoned house where they were found, when they were placed there, or the identity of the person or organization responsible for placing them there. However, the fact that they were found near an abandoned house (a likely target for practicing airmen), together with the fact that the noses of the bombs were crushed and broken open, indicate that the bombs were dropped from one or more airplanes. The type of the bombs indicates that they were dropped by members of the United States Army Air Corps.

It appears that the law firm of Casey, Kriesien & Kriesien, of Portland, Oreg., the attorneys for L. R. Swarthout, and his minor son, Harold Swarthout, having been advised that a claim against the War Department (now Department of the Army) would be difficult to maintain, decided to bring a proceeding against the Hickeys. A suit, therefore, was instituted by L. R. Swarthout, as guardian ad litem for his minor son, Harold Swarthout, against Mr. and Mrs. Hickey in the Circuit Court of Harney County, Oreg., in which he sought the recovery of damages on the ground of the negligence of the defendants in keeping a bomb in their yard. The case was tried before a jury on October 8 and 9, 1945, and resulted in a verdict for the defendants.

It appears that upon further inquiry in 1947 the law firm of Casey, Kriesien & Kriesien was advised by the legal officer of the division engineer's office, Portland, Oreg., that no action could be maintained by L. R. Swarthout on behalf of his minor son against the United States under the Federal Tort Claims Act for the reason that the accident in which said minor was injured occurred prior to January 1, 1945, the effective date of said statute.

In the trial of the aforementioned lawsuit, Dr. John H. Weare, the physician who treated Harold Swarthout following his injury on April 3, 1943, testified as follows:

"Q. Can you tell from an examination of plaintiff's exhibit 1 the date that Harold Swarthout was admitted to the Valley View Hospital?

"A. April 3, 1943.

* * * * * * *

"Q. And explain to the jury the nature, type, and extent of the treatment that was necessary to be rendered for Harold Swarthout.

"A. Harold had suffered a very severe burn, covering most of both of his arms, covering almost the entire front of his chest, and covering his right side and extending around almost to the middle of his back, and on the right side of his chest. The burn also included the front of his neck, the side of his neck, extending up onto the lower portion of his face, around the region below his nose, I would say would be affected.

"With that kind of burn there is considerable shock. That is the first thing we direct our treatment toward. He was given an intravenous injection to combat the shock.

"The burned skin is just like it would be if it was scalded. It had to be pulled off, and he was given tannic acid treatment at that time, which formed a scar—not really a scar—an eschar, we call it. It is a hard surface over the burn, the idea being to keep the burn covered and keep down the amount of weeping that comes from the burn—so much fluid loss. Of course he was given narcotics to soothe the pain. That, I believe, was the most of the treatment.

"Q. How long was Harold in the hospital?
"A. He was discharged June 28, 1943; almost 3 months.
* * * * * * *
"Q. From your treatment, examination, and observation of Harold Swarthout for a period of approximately 3 months, do you have an opinion as to whether or not the injuries sustained by Harold have or will result in any permanent injury?
"A. Yes.
"Q. And what is your opinion, Doctor?
"A. He is going to have scars present for the rest of his life.
"Q. Do you have an opinion as to whether or not there will be any impairment of his physical organs' functioning, Doctor?
"A. Yes.
"Q. What is that opinion?
"A. I think the entire outcome is somewhat indefinite; it can't be definitely stated what will be the exact condition. There is a possibility that even though he has more plastic work done he will still have some scarring that will interfere somewhat with bodily functions."

On September 12, 1951, Adalbert G. Bettman, M. D., the plastic surgeon who had been treating Harold Swarthout, wrote Harold's father, L. R. Swarthout, in part, as follows:

"The last time I saw Harold, in March 1950, he had some scars which pulled tight and which required lengthening by zigzagging.
"I estimate my fee for this work to be about $250 and the hospital bill to be not over $150. It will be necessary for him to be in the hospital about a week."

Harold Swarthout was examined by Maj. Max W. Pegram, Medical Corps, United States Army, Plastic Surgery Section, Letterman Army Hospital, San Francisco, Calif., in July 1952. Major Pegram submitted the following report of his examination:

"*1. Clinical examination:*

"This 19-year-old white male suffered a third-degree burn when he was 10 years of age and which involved the right arm and elbow, the anterior chest and the right side of the neck. Following healing of the burn scar, contractures developed on the medial aspect of the right elbow which limited extension of the forearm and on the right side of the neck which limited extension of the neck. The scar contractures of the right elbow and the right side of the neck have been surgically corrected on July 4, 1944, and June 10, 1948,* * * to allow adequate function of the right elbow and the neck.

"At present there is a thin atrophic, discolored old burn scar of the middle third of the right arm which involves the anterior half of the arm. A thicker scar extends downward on the medial aspect of the right elbow which is rather tight but which does not interfere with function of the elbow. There are thick keloidal old-burn scars of the anterior surface of the chest which do not interfere with functions and which do not involve the nipples. There are also thick keloidal old-burn scars on the anterior surface of the lower neck, part of which has been excised and replaced with a split thickness skin-graft. This scarred area extends into the right side of the upper neck in the area of the body of the right mandible. These latter scars are moderately contracted into logitudinal scar bands but do not interfere with function of the neck. * * *.

"*2. Diagnoses*

"(*a*) Cicatrix of skin of right arm, moderate, chronic, secondary to old burn.
"(*b*) Cicatrix of skin of neck, moderate, chronic, secondary to old burn.
"(*c*) Cicatrix of skin of anterior chest, moderate, chronic, secondary to old burn.

"*3. Opinion of consultant*

"(*a*) Estimate of disability will be evaluated under the following headings:
"(1) Medical: Moderate, i. e., the skin of the atrophic scar of the right arm is considered insufficient for permanent skin coverage and is likely to break down and ulcerate.
"(2) Functional: Moderate, i. e., the loss of elasticity and scar tissue infiltration, with moderate keloidal tendencies, of the scars on the medial aspect of the right elbow and the scar of the right side of the neck are considered insufficient to interfere, except minimally, with motions of the part concerned.
"(3) Cosmetic: Moderate, i. e., in view of the fact that the burn scars are located in unexposed portions of the body, with the exception that the very upper portion of the scar of the right neck extends slightly above the collar line, this consultant considers the cosmetic disability moderate.
"(*b*) The opinions expressed in letter (dated September 12, 1951), from Adalbert G. Bettman, M. D., 629 Pacific Building, Portland, Oreg., to Mr. L. R. Swarthout,

concerning further professional work considered advisable, are concurred in by the undersigned."

From the evidence submitted to the Department of the Army it appears that on account of the injury of his minor son on April 3, 1943, L. R. Swarthout has incurred, or will incur, medical, hospital, and incidental expenses in the aggregate amount of $4,625.20, itemized as follows:

Hospital expenses incurred	$895.20
Estimated future hospital expenses	150.00
Doctor bills incurred	1,392.50
Estimated future doctor bills	250.00
Medicine and supplies	437.50
Special nurse	60.00
Housekeeper required during illness of son	300.00
Travel expenses for 12 trips from Burns, Oreg., to Portland, Oreg	780.00
Expenses for 36 days in Portland, Oreg., at $10 per day	360.00
Total	4,625.20

Although, upon the facts in this case, the Department of the Army believes that Mr. and Mrs. Hickey were negligent in their conduct with respect to the bomb that injured Harold Swarthout, the Department feels that the injury of this boy resulted from an ultrahazardous noncombat activity of the Army for which the United States may properly assume liability in spite of the intervening negligence of third persons. This view is supported by the American Law Institute's Restatement of the Law of Torts as follows:

SECTION 519—MISCARRIAGE OF ULTRAHAZARDOUS ACTIVITIES CAREFULLY CARRIED ON

Except as stated in sections 521–524, one who carries on an ultrahazardous activity is liable to another whose person, land, or chattels the actor should recognize as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultrahazardous, although the utmost care is exercised to prevent the harm.

SECTION 520—DEFINITION OF ULTRAHAZARDOUS ACTIVITY

An activity is ultrahazardous if it—

(*a*) necessarily involves a risk of serious harm to the person, land, or chattels of others which cannot be eliminated by the exercise of the utmost care, and

(*b*) is not a matter of common usage.

Comment a—Ultrahazardous activities distinguished from negligence and nuisance.—The rule stated in this section is applicable to an activity which is of such utility that the risk unavoidably involved in carrying it on cannot be regarded as so unreasonable as to make it negligent to carry it on, * * *.

Comment c—Ultrahazardous subject matter.—The storage and transportation of explosive substances are ultrahazardous activities because no precautions and care can make it reasonably certain that they will not explode and because the harm resulting from their explosion is almost certain to be serious.

SECTION 522—CONTRIBUTING ACTIONS OF THIRD PERSONS, ANIMALS AND FORCES OF NATURE

One carrying on an ultrahazardous activity is liable for harm under the rule stated in section 519, although the harm is caused by the unexpectable—

(*a*) innocent, negligent or reckless conduct of a third person, or

(*b*) action of an animal, or

(*c*) operation of a force of nature.

Comment a—Rationale.—The reason for imposing absolute liability upon those who carry on ultrahazardous activities is that they have thereby for their own purposes created a risk which is not a usual incident of the ordinary life of the community. If the risk ripens into injury, it is immaterial that it is made effective in harm by the unexpectable action of a human being, an animal, or a force of nature. This is so irrespective of whether the action of the human being which makes the ultrahazardous activity harmful is innocent, negligent, or even reckless.

SECTION 524—EFFECT OF CONTRIBUTORY FAULT

(1) A plaintiff is not barred from recovery for harm done by the miscarriage of an ultrahazardous activity caused by his failure to exercise reasonable care to

observe the fact that the activity is being carried on or by intentionally coming into the area which would be endangered by its miscarriage.

(2) A plaintiff is barred from recovery for harm caused by the miscarriage of an ultrahazardous activity if, but only if—

(*a*) he intentionally or negligently causes the activity to miscarry, or

(*b*) after knowledge that it has miscarried or is about to miscarry, he fails to exercise reasonable care to avoid harm threatened thereby.

The conduct of Harold Swarthout, who at the time of the injury was 10 years of age, is not considered to have been contributorily negligent under the circumstances of the instant case. In this regard, the Restatement of the Law of Torts, section 464, states:

SECTION 464—STANDARD OF CONDUCT DEFINED

(1) Unless the plaintiff is a child or an insane person, the standard of conduct to which he should conform is the standard to which a reasonable man would conform under like circumstances.

(2) The standard of conduct to which a child should conform is that to be expected from a child of like age, intelligence, and experience.

After a careful consideration of all the evidence in this case the Department of the Army is of the view that an award in a reasonable amount should be granted for the benefit of Harold Swarthout on account of the injuries sustained by him in the accident of April 3, 1943, and that L. R. Swarthout should be reimbursed for the medical, hospital and incidental expenses which he has incurred, or will be required to incur, as the result of the injury of said boy. Considering the age of this boy at the time of his injury, the pain and suffering he has undergone, the permanent disability sustained by him, including particularly the marked disfigurement of the front and right side of his neck, it is the view of the Department of the Army that an award for his benefit in the amount of $10,000 would be fair and reasonable and clearly not excessive. The Department is of the further view that L. R. Swarthout should be granted an award in the amount of $4,625.20, covering the amount of the expenses which have been incurred by him, and which he may reasonably be expected to incur, in connection with the medical treatment and hospitalization of his son.

These claimants have no remedy under the Federal Tort Claims Act, as amended, for the reason that the accident out of which their claims arise occurred prior to January 1, 1945, the effective date of that statute. There is no other statute under which the claimants may be compensated by the United States in any amount, and their only remedy, therefore, is through the enactment by the Congress of a special relief bill such as S. 1022.

For the purpose of accuracy, it is recommended that, if S. 1022 is favorably considered by the Congress, the text thereof be amended to read as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, (1) to the legal guardian of Harold Swarthout, a minor, of Burns, Oregon, the sum of $10,000, in full settlement of all claims of the said Harold Swarthout against the United States for personal injuries, permanent disability, pain and suffering, and disfigurement sustained by him as the result of the severe burns he received on April 3, 1943, when an Army practice bomb that he was examining, while playing in the yard of a neighbor in Burns, Oregon, exploded when accidentally dropped, and (2) to L. R. Swarthout, of Burns, Oregon, the father of the said Harold Swarthout, the sum of $4,625.20, in full settlement of his claim against the United States for reimbursement of medical, nursing, hospital, and other expenses incurred by him, and which he may reasonably be expected to incur, on account of the injuries so sustained by the said Harold Swarthout: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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84TH CONGRESS, 1st Session | SENATE | REPORT No. 680

PAUL E. MILWARD

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1745]

The Committee on the Judiciary, to which was referred the bill (H. R. 1745) for the relief of Paul E. Milward, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 11, beginning with the word "That", strike out all down through the period on page 2, line 7, and insert in lieu thereof the following:

That Paul E. Milward executes a release of the judgment entered in the case of Paul Milward v. Peter C. Penta, No. 175385, in the Municipal Court of the City of Boston, on or about January 6, 1953; *and provided further*, that no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any persons violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

PURPOSE

The purpose of the proposed legislation is to authorize the Secretary of the Treasury to pay the sum of $1,000 to Paul E. Milward, of Braintree, Mass., in full settlement of all claims against the United States for personal injuries and expenses incurred thereto as a result of an accident involving a United States Army truck, which occurred in Boston, Mass., on December 22, 1941. This sum shall be in satisfaction of record of judgment rendered in favor of Paul E. Mil-

ward and against Peter P. Penta in the municipal court of the city of Boston, Mass.

STATEMENT

Records of the Department of the Army disclose that on the morning of December 22, 1941, Pfc. Peter P. Penta, ASN20136431, Battery G, 208th Coast Artillery (AA), Belmont, Mass., was driving a one-half ton Army pickup truck on official business en route from Belmont to the Army base in Boston, Mass. At about 9:40 a. m. Private First Class Penta was driving said truck in a southerly direction on Atlantic Avenue, approaching the intersection of said avenue with Congress Street in Boston. The truck was traveling in the middle of Atlantic Avenue under the elevated railway, which is constructed over and along the center of said avenue. At the same time Paul E. Milward, then 26 years of age and an employee of the General Alarm Corp. in Boston, was attempting to cross Atlantic Avenue from west to east on the south crosswalk at said intersection. While crossing the street Mr. Milward was struck by the Army truck and knocked down.

As a result of this accident, Mr. Milward sustained a number of contusions and abrasions. He was also injured in and about his hips and legs, left foot, back, left forearm, and right index finger, and he sustained concussion and shock. There was a question of a fracture of the left ulna and of the left hip, but such fractures do not appear to have been established by X-ray pictures. Mr. Milward was taken from the scene of the accident to the Boston City Hospital where he received emergency treatment. He was then taken to his home where he was confined to bed between 2 and 3 weeks. By reason of his injury he was absent from his employment from December 22, 1941, to February 18, 1942, and incurred medical and hospital expenses in the aggregate amount of $69. The Department of the Army is not advised as to the amount of wages lost by the claimant as the result of his injury in this accident.

The Army driver blamed the claimant for the accident, and the claimant placed the responsibility for the accident upon the Army driver. In a statement dated December 24, 1941, the Army driver said:

> At about 9:40 a. m. on December 22, 1941, I was proceeding from our billeting area in Belmont, Mass., to the Army base in Boston. While going south under the elevated tracks on Atlantic Avenue in Government vehicle No. W-225570 at about 20 miles per hour, I noticed a man approaching the pillars that hold up the elevated. He was approaching from my right and slightly to the front of the truck. I believe he stopped and then proceeded and walked into the truck at about the position of the side door, hitting the spare tire at the back of the door. Just before this happened I realized that this man was walking into the vehicle, and I swung a little to the left. I was unable to swing more because a trailer truck was coming down in the opposite direction. My brakes were good, but I could not use them, as it would have done no good. At the time of the accident, the weather was clear and the road was dry.

On December 27, 1941, Mr. Milward made the following statement concerning the accident:

> That on December 22, 1941, at about 9:30 a. m. I was crossing the intersection of Congress Street and Atlantic Avenue, Boston, traveling in an easterly direction. I stopped on the crosswalk waiting for the traffic proceeding in a northerly direction to stop. When I started across the street, the traffic officer had stopped the traffic going south and had not signaled this traffic line ahead at any time either

prior to or subsequent to the accident. When traffic closed in the northerly direction, I started to cross the street and had taken 2 or 3 steps forward on the crosswalk when the Army vehicle struck me. My best recollection is that I was struck by the right front headlight grille as I started to cross on the crosswalk, the nearest stanchion of the elevated structure was 3 or 4 feet away from my right and the nearest upright from my left was 40 or 50 feet away from the spot where I was struck. I lay on the street for about 5 or 10 minutes until a police ambulance arrived and took me to the City Hospital. I was hurled about 20 feet forward and to the right of the truck, the latter stopping about 30 feet beyond where my body was lying.

The policeman who was on duty at the intersection stated that in his opinion the accident was caused by the fault of Mr. Milward. According to Mr. Collin J. McMillan, a disinterested eyewitness to the accident, the Army truck was traveling at a rapid rate of speed at the time of such accident. He said the Army truck—

was traveling a good 35 miles an hour when it came to the intersection where the accident occurred.

On February 21, 1942, Mr. Milward filed a suit in the Municipal Court of Boston against the soldier who was driving the Army truck involved in the accident of December 22, 1941, in which he sought the recovery of the damages sustained by him as the result of his personal injury in said accident (*Paul Milward* v. *Peter P. Penta*, case No. 175,385). An assistant United States attorney for the district of Massachusetts entered an appearance in the case for the defendant and represented him in the proceedings. The trial of the case resulted in a judgment in favor of the plaintiff in the amount of $1,000, with costs in the sum of $16.85, which judgment appears to have been entered in the case on or about January 6, 1953. No appeal was taken from said judgment.

The records of the Department of the Army show that Peter P. Penta was honorably discharged from the United States Army at Fort Devens, Mass., on May 29, 1945, and that he held the grade of technician fifth grade at the time of his discharge. The Department is informed that the plaintiff has been unable to collect from this former soldier the amount of the above-mentioned judgment or any part thereof.

Mr. Milward cannot recover from the United States the damages sustained by him as the result of the aforesaid accident either by a claim or suit under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 921, 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933, 983; 28 U. S. C. 1346 (b), 2672), and as amended by the act of April 25, 1949 (63 Stat. 62), for the reason that said accident arose prior to January 1, 1945, the effective date of said statute. There is no other statute available to the Department of the Army under which any amount may be paid to the claimant on account of his injury in such accident, and the only method by which he may be compensated for the damages sustained by him is through the enactment by the Congress of a private relief bill such as H. R. 1745.

While ordinarily the Congress does not look with favor on bills of the nature that take the form of reimbursing the negligent driver who has paid such a judgment for his negligence, in this case it appears that to take unfavorable action on this bill would only result in the innocent party not being compensated for the damage suffered at the hands of a member of the Armed Forces of the United States. Moreover, had this accident occurred in a foreign country, the Army

would have been permitted to settle this claim under the provisions of the Foreign Claims Settlement Act. Under these circumstances, therefore, the committee recommends enactment of the bill, as amended.

Attached hereto for the information of the Senate is the report of the Department of the Army and other evidentiary data submitted in connection with a similar bill of the 83d Congress.

DEPARTMENT OF THE ARMY,
Washington, D. C., August 17, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter enclosing a copy of H. R. 4713, 83d Congress, a bill for the relief of Paul E. Milward, and requesting a report on the merits of the bill.

This bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $1,016.85 to Paul E. Milward, of Braintree, Mass., in full settlement of all claims against the United States for personal injuries and expenses incident thereto as a result of an accident involving a United States Army truck on December 22, 1941.

"SEC. 2. The Secretary of the Treasury shall require the cancellation of judgment against Peter C. Penta, from the Municipal Court of the City of Boston, Mass., before payment shall be made under this Act."

On the morning of December 22, 1941, Pfc. Peter P. Penta, ASN20,136,431, Battery G, 208th Coast Artillery (AA), Belmont, Mass., was driving a one-half ton Army pickup truck on official business en route from Belmont to the Army base in Boston, Mass. At about 9:40 a. m., Private First Class Penta was driving said truck in a southerly direction on Atlantic Avenue, approaching the intersection of said avenue with Congress Street in Boston. The truck was traveling in the middle of Atlantic Avenue under the elevated railway, which is constructed over and along the center of said avenue. At the same time Paul E. Milward, then 26 years of age and an employee of the General Alarm Corp. in Boston, was attempting to cross Atlantic Avenue from west to east on the south crosswalk at said intersection. While crossing the street Mr. Milward was struck by the Army truck and knocked down.

As a result of this accident Mr. Milward sustained a number of contusions and abrasions. He was also injured in and about his hips and legs, left foot, back, left forearm, and right index finger, and he sustained concussion and shock. There was a question of a fracture of the left ulna and of the left hip, but such fractures do not appear to have been established by X-ray pictures. Mr. Milward was taken from the scene of the accident to the Boston City Hospital where he received emergency treatment. He was then taken to his home where he was confined to bed between 2 and 3 weeks. By reason of his injury he was absent from his employment from December 22, 1941, to February 18, 1942, and incurred medical and hospital expenses in the aggregate amount of $69. The Department of the Army is not advised as to the amount of wages lost by the claimant as the result of his injury in this accident.

The Army driver blamed the claimant for the accident, and the claimant placed the responsibility for the accident upon the Army driver. In a statement dated December 24, 1941, the Army driver said:

"At about 9:40 a. m. on December 22, 1941, I was proceeding from our billeting area in Belmont, Mass., to the Army base in Boston. While going south under the elevated tracks on Atlantic Avenue in Government vehicle No. W-225570 at about 20 miles per hour, I noticed a man approaching the pillars that hold up the elevated. He was approaching from my right and slightly to the front of the truck. I believe he stopped and then proceeded and walked into the truck at about the position of the side door, hitting the spare tire at the back of the door. Just before this happened I realized that this man was walking into the vehicle, and I swung a little to the left. I was unable to swing more because a trailer truck was coming down in the opposite direction. My brakes were good, but I

could not use them, as it would have done no good. At the time of the accident, the weather was clear and the road was dry."

On December 27, 1941, Mr. Milward made the following statement concerning the accident:

"That on December 22, 1941, at about 9:30 a. m. I was crossing the intersection of Congress Street and Atlantic Avenue, Boston, traveling in an easterly direction. I stopped on the crosswalk waiting for the traffic proceeding in a northerly direction to stop. When I started across the street, the traffic officer had stopped the traffic going south and had not signaled this traffic line ahead at any time either prior to or subsequent to the accident. When traffic closed in the northerly direction, I started to cross the street and had taken 2 or 3 steps forward on the crosswalk when the Army vehicle struck me. My best recollection is that I was struck by the right front headlight grille as I started to cross on the crosswalk, the nearest stanchion of the elevated structure was 3 or 4 feet away from my right, and the nearest upright from my left was 40 or 50 feet away from the spot where I was struck. I lay on the street for about 5 or 10 minutes until a police ambulance arrived and took me to the City Hospital. I was hurled about 20 feet forward and to the right of the truck, the latter stopping about 30 feet beyond where my body was lying."

The policeman who was on duty at the intersection stated that in his opinion the accident was caused by the fault of Mr. Milward. According to Mr. Collin J. McMillan, a disinterested eyewitness to the accident, the Army truck was traveling at a rapid rate of speed at the time of such accident. He said the Army truck "was traveling a good 35 miles an hour when it came to the intersection where the accident occurred."

On February 21, 1942, Mr. Milward filed a suit in the Municipal Court of Boston against the soldier who was driving the Army truck involved in the accident of December 22, 1941, in which he sought the recovery of the damages sustained by him as the result of his personal injury in said accident (*Paul Milward* v. *Peter P. Penta*, Case No. 175,385). An assistant United States attorney for the district of Massachusetts entered an appearance in the case for the defendant and represented him in the proceedings. The trial of the case resulted in a judgment in favor of the plaintiff in the amount of $1,000, with costs in the sum of $16.85, which judgment appears to have been entered in the case on or about January 6, 1953. No appeal was taken from said judgment.

The records of the Department of the Army show that Peter P. Penta was honorably discharged from the United States Army at Fort Devens, Mass., on May 29, 1945, and that he held the grade of technician fifth grade at the time of his discharge. The Department is informed that the plaintiff has been unable to collect from this former soldier the amount of the above-mentioned judgment or any part thereof.

Mr. Milward cannot recover from the United States the damages sustained by him as the result of the aforesaid accident either by a claim or suit under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 921, 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933, 983; 28 U. S. C. 1346 (b). 2672), and as amended by the act of April 25, 1949 (63 Stat. 62), for the reason that said accident arose prior to January 1, 1945, the effective date of said statute. There is no other statute available to the Department of the Army under which any amount may be paid to the claimant on account of his injury in such accident, and the only method by which he may be compensated for the damages sustained by him is through the enactment by the Congress of a private relief bill such as H. R. 4713.

In the light of all the facts and circumstances in this case it is the view of the Department of the Army that the United States may properly assume responsibility for the damages sustained by Mr. Milward by paying to him the amount of the aforesaid judgment obtained by him against Peter P. Penta. The Department of the Army, accordingly, would have no objection to the enactment of H. R. 4713 if everything after the word "truck" in line 9, page 1 of the bill, is stricken out and there is inserted in lieu thereof the following:

"which occurred in Boston, Massachusetts, on December 22, 1941: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

"SEC. 2. That the Secretary of the Treasury shall require the satisfaction of record of a certain judgment rendered in favor of the said Paul E. Milward and against one Peter P. Penta in Case No. 175,385 in the Municipal Court of the City of Boston, Massachusetts, before the payment of the amount appropriated in this Act shall be made to the said Paul E. Milward."

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

MUNICIPAL COURT OF THE CITY OF BOSTON

CLERK'S OFFICE FOR CIVIL BUSINESS

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

I hereby certify that Paul Milward, of Boston, in the county of Suffolk, plaintiff, on the 16th day of January, A. D. 1953, before our justices of the municipal court of the city of Boston, holden at said Boston within said county of Suffolk, for civil business, recovered judgment in an action of tort against Peter P. Penta, of Falmouth, Barnstable County, defendant, for the sum of $1,001, debt or damage, and $15.85, for charges of suit.

Writ dated: January 23, 1942.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at said Boston, this 28th day of April in the year of our Lord one thousand nine hundred and fifty-three.

[SEAL] GEORGE F. DEVINE,
Assistant Clerk.

Judgment date, January 16, 1953:

Damages	$1,001.00
Costs	15.85
Total	1,016.85

[Endorsement]

MUNICIPAL COURT OF THE CITY OF BOSTON

FOR CIVIL BUSINESS

1942. No. 175385. John J. McCarthy

PAUL MILWARD *v.* PETER C. PENTA

CERTIFICATE OF JUDGMENT

AFFIDAVIT

TOWN OF BRAINTREE, MASS.

COMMONWEALTH OF MASSACHUSETTS,
County of Norfolk, ss:

Before me, the undersigned, personally appeared Paul Milward, who deposes and says that:

My name is Paul Milward and I reside at 112 Howie Road, Braintree, Mass. On December 22, 1941, at about 10:30 a. m., while I was crossing Atlantic Avenue, Boston, Mass., at the intersection of Congress Street, I was struck and knocked down by a United States Army vehicle, registration No. W225570, and the operator of the vehicle was Peter C. Penta, Army serial No. 20136431, at that time attached to Battery G, 208th Coast Artillery, CAAA, Camp Edwards, Falmouth, Mass.

I was removed to the Boston City Hospital in a police ambulance. I received injuries to both hips, left toe, left forearm, both legs, right index finger, back, question of fracture of left ulna, question of fracture of left hip, concussion, and also suffered from nervous shock. I was totally confined to bed for nearly 3

weeks and partially confined off and on for several months. I was absent from the General Alarm Corp., 89 Broad Street, Boston, Mass., where I was employed at the time of the accident, until February 18, 1942. I did not fully recover from my injuries until about 18 months following the accident. When I was struck by the vehicle, I was thrown into the air about 20 feet. All my clothes were torn off, even my shoes and socks.

I retained an attorney who subsequently brought an action against Peter C. Penta, but due to the fact that he was in the military service, the case was not tried in court until January 16, 1953. Judgment was entered in my favor by a justice of the Municipal Court of the City of Boston and damages were assessed in the amount of $1,001 and $15.85 costs, making a total of $1,016.85. Execution against Peter C. Penta issued out of the Municipal Court of the City of Boston in the above amount on January 17, 1953. The bill to the Boston City Hospital amounted to $21; the bill of my family physician, Dr. George H. Schwartz, amounted to $48; my attorney's fee amounted to $333; and my loss of wages amounted to approximately $250. I was advised by my attorney that I was unable to proceed with a court action against the United States Government due to the fact that the Federal Tort Claims Act had not been enacted at the time I received my injuries.

PAUL MILWARD.

APRIL 25, 1953.

Then personally appeared the above-named Paul Milward, who on oath deposes and says that the within statement is true,

Before me,

[SEAL] CAROLYN CRONIN, *Notary Public.*

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Calendar No. 686

84TH CONGRESS, 1st Session } SENATE { REPORT No. 681

TENNESSEE C. BATTS

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2769]

The Committee on the Judiciary, to which was referred the bill (H. R. 2769) for the relief of Tennessee C. Batts, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 10, strike the period, insert a colon and the following:

Provided, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

PURPOSE

The purpose of the proposed legislation, as amended, is to relieve Mr. Tennessee C. Batts, of Waco, Tex., of all liability to refund $647.50, a sum which represents compensation received by him as an employee of the Post Office Department while he was also employed by the Veterans' Administration. It is further provided that he be refunded any of that amount which he may have paid back to the Government or which was withheld from sums due him.

STATEMENT

The statement of facts relative to this claim are contained in House Report No. 528 on H. R. 2769, which is hereinafter set forth in full.

[H. Rept. No. 528, 84th Cong., 1st sess.]

Mr. Batts has been continuously employed by the Veterans' Administration Center, Waco, Tex., since October 27, 1945. From April 1, 1952, to October 15, 1953, he was employed as a cleaner in the post office at Waco, Tex. For this part-time employment he was paid a total amount of $647.50. The Comptroller General of the United States determined that such a payment was violative of provisions of law which impose a limitation on the amount of combined compensation which may be received from employment in more than one Federal position. As a result the Comptroller General instituted action to effect adjustment for the payment.

As is observed in the report of the Post Office Department, the Government has received the benefit of the service of Mr. Batts during the course of his dual employment. Further Mr. Batts did not know of any reason why he could not take the part-time job in the post office when it was offered to him. When Mr. Batts did learn that there was a law which barred dual compensation, he immediately resigned his job in the post office.

The Committee has reviewed the circumstances of Mr. Batts' employment and is of the firm opinion that he should be excused from liability to refund any part of the compensation that he earned doing part-time work for the Post Office Department. Clearly the Government benefited from the labor performed, and it is also clear that the work did not interfere in anyway with the work Mr. Batts performed for the Veterans' Administration. To require a refund of that money would be grossly unfair to Mr. Batts, and would work an unwarranted hardship on his family. Therefore the committee recommends favorable consideration of the bill.

Information from the office of the sponsor of this legislation indicates that there is no attorney involved in this matter.

After consideration of the foregoing and the attachments hereto, the committee agrees with the action of the House and recommends that the bill, H. R. 2769, as amended, be considered favorably.

POST OFFICE DEPARTMENT,
OFFICE OF THE SOLICITOR,
Washington, D. C., March 4, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for a report on H. R. 2769, a bill for the relief of Tennessee C. Batts.

This measure would relieve Mr. Batts of liability to refund to the Government the sum of $647.50. This sum represents compensation received by Mr. Batts as an employee of the Post Office Department during the period April 1, 1952, to October 15, 1953, inclusive, while he was also employed at the Veterans' Administration, and was receiving dual compensation from the United States at a combined annual rate in excess of $2,000.

Since the Government has received the benefit of the services of Mr. Batts during the course of the dual employment, this Department would interpose no objection to the enactment of this legislation.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to the committee.

Sincerely yours,

ABE MCGREGOR GOFF,
The Solicitor.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D. C., March 9, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: This has further reference to your request for a Veterans' Administration report on H. R. 2769, 84th Congress, a bill for the relief of Tennessee C. Batts, which provides as follows:

"That Tennessee C. Batts, Waco, Tex., is hereby relieved of all liability to refund to the United States the sum of $647.50. Such sum represents compensation received by said Tennessee C. Batts as an employee of the Post Office Department during the period April 1, 1952, to include October 15, 1953, while he was also employed at the Veterans' Administration, and was receiving dual compensation from the United States at a combined annual rate in excess of $2,000. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for the amount for which liability is relieved by this act.

"SEC. 2. The Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the said Tennessee C. Batts, an amount equal to the aggregate of the amounts paid by him or withheld from the sums due him in the complete or partial satisfaction of the claim of the United States for such refund."

The records of the Veterans' Administration disclose that Mr. Batts has been continuously employed by the Veterans' Administration Center, Waco, Tex., since October 27, 1945. It appears that during the period April 1, 1952, to October 15, 1953, Mr. Batts was employed as a cleaner in the post office at Waco, Tex., for which he was paid compensation by the Post Office Department at the rate of $420 per annum or a total amount of $647.50 for the period in question. This is the amount with which the bill is concerned.

In accordance with existing law which imposes a limitation on the amount of the combined compensation which may be received from employment in more than one Federal position, the Comptroller General of the United States determined that the $647.50 was an indebtedness to the United States which Mr. Batts was required to refund. Action has been instituted by the Comptroller General to effect an early adjustment of the claim of the Government.

The indebtedness resulting from the payment of compensation to Mr. Batts by the Post Office Department and the recovery of such indebtedness are matters of primary interest to the Post Office Department and the General Accounting Office, from which the committee undoubtedly has requested or will request reports on H. R. 2769. Accordingly, the Veterans' Administration has no comment to make concerning the merits of the bill.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

JOHN S. PATTERSON,
Deputy Administrator
(For and in the absence of the Administrator).

THE STATE OF TEXAS,
County of McLennan:

Before me, a notary public in and for McLennan County, Tex., on this day personally appeared Tennessee C. Batts, personally known to me, who, after being duly sworn, on oath deposed and said as follows:

That I have been employed for some time at the Veterans' Administration in Waco, Tex., and while so employed, was offered a part-time job with the Post Office Department in Waco. When I commenced working for the Post Office Department, and all during the time I was employed by the Post Office Department, I did not know that there was any law which prohibited a person from performing two jobs for various departments of the Federal Government and receiving pay therefor. While so employed, I performed both of these duties satisfactorily, and, as soon as I discovered that there was a law prohibiting dual compensation, I resigned my job with the Post Office, as I did not want to violate any of my country's laws.

Witness my hand, this 25th day of March 1955.

TENNESSEE C. BATTS, *Affiant.*

Subscribed and sworn to before me by the said Tennessee C. Batts, this 25th day of March 1955, to certify which witness my hand and seal of office.

[SEAL] KATHERINE HOLIWARD,
Notary Public, McLennan County, Tex.

VETERANS' ADMINISTRATION CENTER,
Waco, Tex., January 5, 1955.

To Whom It May Concern:

This is to certify that the following is a résumé of the employment record of Mr. Tennessee C. Batts, while employed at this center:

October 27, 1945: Appointed as hospital attendant, SP–2, $1,572 per annum.
July 1, 1946: Periodic pay increase, SP–2, $1,888 per annum.
May 4, 1947: Promotion to hospital attendant (mental), SP–3, $1,954 per annum.
August 24, 1947: Conversion to competitive status, same position, grade and salary.
May 16, 1948: Periodic pay increase to $2,020 per annum.
July 11, 1948: Public Law 900, salary rate adjusted to $2,350 per annum.
May 29, 1949: Periodic pay increase to $2,423.04 per annum.
October 30, 1949: Public Law 429, salary rate and grade adjusted to $2,610 per annum, GS–2.
May 28, 1950: Periodic step increase to $2,690 per annum.
May 27, 1951: Periodic step increase to $2,770 per annum.
July 8, 1951: Public Law 201, salary rate adjusted to $3,070 per annum.
May 25, 1952: Periodic step increase to $3,150 per annum.
May 24, 1953: Periodic step increase to $3,230 per annum.

The services of Mr. Batts have been entirely satisfactory while employed at this station.

Very truly yours,

H. L. BECKHAM,
Personnel Officer.

To Wom It May Concern:

On or about April 1, 1952, Tennessee Batts was recommended to me as a capable man to clean and do janitor work as required at B. U. substation, Waco, Tex., post office.

After investigating his references, I referred and recommended him to Mr. L. C. Alexander, postmaster at Waco, Tex., who employed him for this purpose.

Batts' hours on these duties were between 7 and 9 o'clock each morning except Sundays and holidays. He performed his work in an exceptional manner, being always on time and industrious.

It is my opinion that this work did not in any way interfere with any other employment, and that the Government of the United States received full value for any remuneration that he received.

GAINES J. BARRON,
Superintendent, B. U. Station, Waco, Tex.

WILCOX, PATTILLO & CO.,
Waco, Tex., January 4, 1955.

To Whom It May Concern:

It has been brought to my attention that a claim has been made by the United States Government against Tennessee Batts for wages paid him while working at a second civil-service post.

I have known Tennessee Batts for the past several years and have found him to be a reliable, hard-working person and one who makes every effort to "play his cards on top of the table." In that I have prepared his income-tax returns for the past few years, I do know that he has reported all such income for tax purposes and has not made any effort to hide the fact that he was holding two such jobs.

It is my further understanding that Tennessee Batts did not know he was violating a Federal statute and rendered full service for consideration paid him in both instances.

It seems to me a high injustice to require of him to refund money paid him when good and valid services were rendered therefor. This is particularly true when viewed in the light of the fact that everyone knew he was working in two such jobs, when he did not know he was violating a Federal statute, and when such services were rendered at no small inconvenience to himself and to his family.

Yours very truly,

R. D. PATTILLO.

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Calendar No. 687

84TH CONGRESS, 1st Session | SENATE | REPORT No. 682

RODOLFO C. DELGADO, JESUS M. LAGUA, AND VINCENTE D. REYNANTE

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3363]

The Committee on the Judiciary, to which was referred the bill, (H. R. 3363) for the relief of Rudolfo C. Delgado, Jesus M. Lagua, and Vincente D. Reynante, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 7, strike the words "in excess of 10 per centum of any claim".

PURPOSE OF AMENDMENT

Information available to the committee indicates that there is no attorney involved in this matter.

The purpose of this proposed legislation, as amended, is to pay Rudolfo C. Delgado $8,000; Jesus M. Lagua, $2,000; and Vincente D. Reynante, $500. All three claimants are natives of the Republic of the Philippines. Payment of said sums would be in full settlement of all claims against the United States for personal injuries, loss of wages, pain and suffering sustained by said individuals as the result of a traffic accident which occurred on Okinawa, Ryukyus, May 5, 1950, when a United States Army vehicle collided with a motorcar in which claimants were riding.

STATEMENT

This proposed legislation was introduced at the request of the Secretary of the Army, and the Department of the Army recommends its enactment into law.

On May 5, 1950, claimant Delgado, accompanied by claimants Lagua and Reynante, was operating a 1941 Ford sedan south on

Highway No. 1, Machinato, Okinawa. At the same time, a United States Army semitractor hauling a 750-gallon water trailer was proceeding north on the same highway. It was being operated by an enlisted man on official business.

As the two vehicles approached, the tongue of the trailer broke where it had been welded, and the trailer became disengaged, veered to the left side of the road, crashed into the Ford sedan operated by Delgado. By virtue of this collision, claimant Delgado sustained a compound fracture of the left femur. Due to the fact that the fracture failed to unite, a bone graft became necessary which was followed by complications which required removal of the bone plates, screws, and one piece of bone graft, with further treatment after which the healing progressed without incident. Subsequent physical examination disclosed claimant Delgado's left leg to be one-half inch shorter than his right leg, but otherwise a complete functional recovery which does not impair his ability to work. Disability is estimated by the Department of the Army to be 25 percent, partial permanent.

At the time of the accident, the claimant, Delgado, was employed as a guard by the Rycom Central Exchange (a nonappropriated fund activity of the Army) at a biweekly rate of $51.50, plus overtime. While incapacitated from employment from May 5, 1950 until May 1953 (approximately 3 years), on the last-mentioned occasion, claimant had recovered sufficiently to obtain light employment at an average monthly salary of $52.50.

The Department of the Army takes the view that claimant, Delgado, should be compensated for his injury in a reasonable amount, and that $8,000, composed of $460.65 for actual expenses incurred in connection with the injury; $4,490 for complete loss of earnings for 3 years, and partial loss of earnings until January 1954, with the balance for very substantial pain and suffering, is reasonable.

The second claimant, Lagua, sustained a compound fracture of the left lower jaw, lacerations of the face and left eyebrow as a result of the accident. He was hospitalized for slightly over a month, and is permanently disfigured by 2 scars, 1 above the left eye, the other on the lower part of the face, with an injury to the eyelid which makes it impossible for him to close his left eye fully. The Department of the Army is of the opinion that $2,000 to cover permanent disfigurement, pain and suffering, which total sum also would include $40.80 for hospital expenses, and $176.51 for loss of earnings, would be a reasonable settlement of this claim.

The third and final claimant, Reynante, as well as the first and second claimants, was employed as a guard by the Rycom Central Exchange. In the accident in question claimant, Raynante, sustained scalp wounds with a temporary cerebral concussion, was treated in the hospital for approximately 5 days, and released with no apparent permanent disability. The Department of the Army is of the opinion that $500, which would include within that amount $38.25 for loss of earnings, and $6 for hospital expenses, with the balance for pain, suffering, and any residual disability (claimant later complained of headaches and dizziness), would be a reasonable settlement.

All three claimants have expressed their willingness to settle their respective claims in the amounts recommended here by the Department of the Army by executing settlement agreements.

The Department of the Army's report states that none of these claims can be considered under the provisions of the Foreign Claims

Act (act of January 2, 1942, 55 Stat. 880), as amended (31 U. S. C. 224d) since claimants are natives of the Republic of the Philippines and cannot be considered inhabitants of the Ryukyus. The claims could not be considered under the provisions of the Federal Tort Claims Act of 1946 (60 Stat. 842), as amended (28 U. S. C. 921–934) since they arose in a foreign country. That the only portions of these claims which could be considered under the provision of the act of July 3, 1943 (57 Stat. 372), as amended (31 U. S. C. 223b), are those dealing with medical and hospital expenses actually incurred (Delgado, $460.65; Lagua, $40.80 Reynante $6), because of the express limitation contained in that act. The minor medical expenses in the case of the more serious injuries are due to the fact that all three being employees of the Rycom Exchange were treated at Army facilities. In the opinion of the Department of the Army, there is no other statute under which these claims may be paid.

In view of the fact that Congress on occasion has favorably considered bills to pay persons injured as a result of the activities of members of the Armed Forces of the United States who would have been paid under the Foreign Claims Act, but for the fact that injury occured in a foreign country of which the claimant was not an inhabitant (Private Law No. 322, 83d Cong.); coupled with the facts which gave rise to these claims, the committee accordingly recommends favorable consideration of H. R. 3363.

The report of the Department of the Army in connection with these claims is attached and is as follows:

DEPARTMENT OF THE ARMY,
Washington, D. C., January 14, 1955.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill to provide for the payment of certain claims for personal injuries arising out of activities of the Army, which the Department of the Army recommends be enacted into law. The submission of this legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of the proposed bill is to provide for the payment of certain claims that this Department believes to be meritorious and worthy of payment, which cannot be settled administratively.

These claims arose out of an automobile accident which occurred on Okinawa, Ryukyus, on May 5, 1950. On that date, a 1941 Ford sedan owned by Manuel R. Ocampo, address unknown, and operated by Rodolfo C. Delgado, in which Jesus M. Lagua and Vicente D. Reynante were passengers, was proceeding south on Highway No. 1, Machinato, Okinawa. A United States Army semitractor, hauling a 750-gallon water trailer, operated by an enlisted man on official business, was proceeding north on the same highway. As the two vehicles approached each other, the tongue of the trailer broke at a point where it had been welded, and the trailer, becoming disengaged, veered to the left side of the road and crashed into the Ford sedan. The civilian automobile was completely demolished and its occupants sustained serious personal injuries which are more fully described below.

Particulars with respect to each of the occupants of the civilian automobile are as follows:

Rodolfo C. Delgado, a native of the Republic of the Philippines, was born on April 17, 1928, and is currently residing at 183–C Camarines Street, Santa Cruz, Manila, Republic of the Philippines. At the time of the accident he was employed as a guard by the Rycom Central Exchange (a nonappropriated fund activity of the Army) in Okinawa at a biweekly rate of $51.50 and had been performing considerable overtime work. As a result of the accident, he was hospitalized in the 34th General Hospital, Okinawa, from May 5 to July 8, 1950, for a compound fracture of the left femur. He was then evacuated to the 1st Hospital Group, Clark Air Force Base, Republic of the Philippines. More than a year later, Lt. Col. Thomas H. Crouch, Chief of Surgical Service at that hospital, issued the following statement on July 23, 1951, regarding Mr. Delgado's injury:

" * * * an open reduction of a compound comminuted fracture of the left femur was performed on August 2, 1950. This fracture of the left femur failed to unite; therefore an open reduction with bone graft taken from the right ilium and fixed by 2 bone plates was performed on January 10, 1951. The patient developed a chronic draining sinus at the upper end of the wound and was re-operated upon on May 17, 1951, and the bone plates and screws and one sequestrated piece of bone graft was removed and the wound was debrided and closed by primary suture. He was treated with multiple antibiotics and healing progressed without incident. He was fitted with a double-bar ischial weight-bearing brace and discharged from the hospital on June 19, 1951.

"Re-X-rays taken on July 20, 1951, show progressive healing but the femur is not yet sufficiently healed to allow unsupported weight bearing on this leg. Operative scars are well healed. There is limitation of flexion and extension of the left knee and ankle. The permanence and degree of disability cannot be determined for at least another 6 months."

On December 29, 1950, Mr. Delgado filed a claim in the amount of $24,104.30 for the injuries he sustained in this accident, including the following:

For actual and necessary payments for hospitalization (the receipts are in my possession)	$256.80
For further hospitalization	500.00
For actual loss in wages from July 8, 1950, to date	669.50
For loss in wages for 2 years during which I cannot resume profitable employment	2,768.00
For loss in earning capacity on account of injuries sustained	10,000.00
For moral damages for physical pain and suffering and extreme mental anguish	10,000.00
Total	24,104.30

In May 1953, Mr. Delgado had recovered sufficiently to do light work and obtained employment at Bagnio City, Republic of the Philippines, at an average monthly salary of $52.50. A physical examination, made on December 29, 1953, indicated the following:

"Disability, 25 percent, partial permanent, due to damage to the left femur associated with atrophy of the flexors, extensors, and lateral rotators of the left thigh. Patient is unable to perform work involving maximum stress on the left leg."

A subsequent physical examination made on January 11, 1954, showed that while his left leg was one-half inch shorter and was smaller in circumference than his right leg, Mr. Delgado had made a complete functional recovery with complete healing of the fracture and osteomyelitis. Although he stands with a slight pelvic tilt to the left, he walks well and without a limp, and can do any kind of work. The expenses actually incurred by him in connection with medical treatment and hospitalization appear to have totaled $460.65.

It is the view of the Department of the Army that Mr. Delgado should be compensated for his injury in a reasonable amount and that the payment of $8,000, composed of $460.65 for actual expenses incurred in connection with the injury, $4,490 for complete loss of earnings for 3 years and partial loss until January 1954, and the balance for the very substantial amount of pain and suffering sustained is reasonable. Mr. Delgado has signified his willingness to settle his claim for this amount by executing a settlement agreement.

Jesus M. Lagua, a native of the Republic of the Philippines, currently residing at 16–B Perla Extension, Tondo, Manila, Republic of the Philippines, at the time of the accident also was employed as a guard by the Rycom Central Exchange. As a result of the accident he sustained a compound fracture of the left lower jaw and lacerations of the face and left eyebrow. He was hospitalized from May 5 to June 8, 1950, at the 34th General Hospital, Okinawa, and his face is permanently disfigured by 2 scars, 1 above the left eye and the other on the lower part of his face extending from a point centrally located between the lower lip and the chin to a point near the base of the left ear. An injury to the left eyelid prevents the normal functioning of the lid and makes it impossible for him to close his left eye fully. On July 31, 1950, he filed a claim with the Department of the Army in the amount of $4,500, which he amended to the amount of $10,000 on January 27, 1951, because the malfunctioning of the left eyelid and the disfiguring scars had been found to be permanent. His hospital expenses amounted to $40.80 and he was unable to work for 26 days sustaining a loss of earnings in the amount of $176.51.

It is the view of the Department of the Army that Mr. Lagua reasonably may be compensated for his permanent injury and disfigurement by the payment of $2,000, composed of $40.80 for hospital expenses, $176.51 for loss of earnings, and the balance for pain and suffering, facial disfigurement and permanent injury. Mr. Lagua has signified his willingness to settle his claim for this amount by signing a settlement agreement.

Vicente D. Reynante, a native of the Republic of the Philippines, and currently residing at Kawit, Cavite, Republic of the Philippines, at the time of the accident similarly was employed by the Rycom Central Exchange as a guard. As a result of the accident he sustained injuries diagnosed as a scalp wound with temporary cerebral concussion. He was treated at the 34th General Hospital, Okinawa, from May 5, until May 10, 1950, when he was released with no apparent permanent disability. His hospitalization expenses amounted to $6 and he sustained a loss of earnings in the amount of $38.25. On July 31, 1950, he filed a claim with the Department of the Army in the amount of $2,500 which was amended to the amount of $3,000 on March 31, 1951, because of "headache and recurring dizziness."

It is the view of the Department of the Army that Mr. Reynante reasonably may be compensated for his injury by the payment of $500, composed of $6 for hospital expenses, $38.25 for loss of earnings and the balance for pain and suffering and any residual disability. Mr. Reynante has signified his willingness to settle his claim in this amount by the execution of a settlement agreement.

None of these claims could be considered under the provisions of the Foreign Claims Act (Act of January 2, 1942, 55 Stat. 880), as amended (31 U. S. C. 224d), as the claimants are natives of the Republic of the Philippines and could not be considered inhabitants of the Ryukyus. The claims could not be considered under the provisions of the Federal Tort Claims Act of 1946 (60 Stat. 842), as amended (28 U. S. C. 921–934), as they arose in a foreign country.

The only portions of these claims that could be considered under the provision of the act of July 3, 1943 (57 Stat. 372), as amended (31 U. S. C. 223b), are those dealing with medical and hospital expenses actually incurred (Delgado, $460.65; Lagua, $40.80; Reynante, $6) because of the express limitation contained in that act. As all of these claimants were employees of the Rycom Exchange and were therefore treated at Army facilities, this element is a minor part of the claim in each case.

There is no other statute under which these claims may be paid.

The Congress, on occasion, has favorably considered bills to pay persons injured as a result of the activities of members of the Armed Forces of the United States who would have been paid under the Foreign Claims Act, supra; but for the fact that the injury occurred in a foreign country of which the claimant was not an inhabitant. The most recent case in point is Private Law No. 322, 83d Congress, for the relief of two natives of Austria, Franz Gerich and Willy Gerich, his minor son, who was injured in Czechoslovakia.

The total cost of the bill, if enacted, will be $10,500.

The Bureau of the Budget advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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Calendar No. 688

84TH CONGRESS
1st Session

SENATE

REPORT
No. 683

FOR THE RELIEF OF ERNEST B. SANDERS

JUNE 27, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 415]

The Committee on the Judiciary, to which was referred the bill (S. 415) for the relief of Ernest B. Sanders, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENT

1. On page 1, line 6, strike "$25,000" and insert in lieu thereof "$15,000".
2. On page 2, lines 2 and 3, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to the claimant, Ernest B. Sanders, of Miami, Fla., the sum of $15,000 in full and final settlement of all claims against the United States for personal injury, pain and suffering, permanent disability, and loss of earnings, sustained by him and resulting from an accidental and improper division of or injury to an artery while he was a patient in the United States Marine Hospital at Savannah, Ga., during March of 1933.

STATEMENT

The committee reported identical legislation, S. 684, 83d Congress, which was passed by the Senate on August 10, 1954, but no action was taken by the House of Representatives.

This claimant was a member of a crew on the steamship *Schickshinny* that belonged to the South Atlantic Steamship Co., of Savannah, Ga.

While loading stores aboard the ship to sail for Liverpool, England, the claimant slipped and hit his side on the corner of a small boat. The injury at the time did not appear to hurt him. After 3 days at sea, his side began to swell and about 3 days out of Liverpool, he was hospitalized on the ship. Upon arrival at Liverpool, he was placed in the Belmont-Rhodes Hospital, where his side was opened up and drained. As a result of the injury, he stayed in England for about 6 months. He left England February 9, 1933, and sought a physician in Rotterdam, as the swelling had returned. He came back to the United States shortly thereafter in order to get treatment and care under the Public Health Service. He was then hospitalized in the Marine Hospital in Savannah, Ga. After staying in this hospital for about 2 weeks, he was taken to the operating room to undergo surgery, which, according to the statement by the nurse in attendance, was of a minor nature. Her statement relative to the facts is hereto attached and made a part of this report. That statement indicates that this patient was told that it was a minor operation but that the anesthetist present made the remark that he would not do that operation for $10,000, at which statement, the surgeon evidently surprised, looked up at him and asked why. At that moment the femoral artery was nicked, and the patient started hemorrhaging. The statement further indicates that when this incident happened, the anesthetist said, "You see, doctor, that's why." The bleeding was checked, and due to a blood clot, his left leg became infected with gangrene, and as a result the leg had to be amputated.

The abstract from the clinical record, United States Public Health Service, Treasury Department, which is hereto attached and made a part of this report, dated July 3, 1933, indicates that the peritoneal cavity was twice opened accidentally during this operation. The operation occurred, according to the clinical report, on March 21, 1933, and on March 27, 1933, this claimant became infected with dry gangrene of the left leg, at which time the amputation was made.

Hearings were held on this claim by a subcommittee of the Committee on the Judiciary on June 12, 1953, at which time the claimant testified as to the above facts as set forth in the documents hereto attached.

Also hereto attached is a letter from the medical officer in charge of the Marine Hospital, Savannah, Ga., to the Surgeon General, United States Public Health Service, dated May 23, 1933. This letter also indicates that the peritoneal cavity was opened accidentally twice.

The Department of Justice, in its report dated September 28, 1951, and the report of the Federal Security Agency dated August 30, 1951, state in effect that there appeared to be no negligence or malpractice on the part of Government medical personnel concerned, and state that there is nothing to indicate that the degree of professional skill exercised by Government doctors in this case fell short of this standard, and therefore recommend against enactment of this legislation. The reports referred to are hereto attached and made a part hereof.

Another question was raised as to why such a long period of time lapsed before this claimant appealed to the Congress for relief, and the claimant stated that he simply did not know that he might be entitled to any such relief until he read somewhere in 1947 or 1948 that some lady had fallen in a post office, accidentally hurting her leg, and she had sued the Government. He then went to attorneys who advised him there was nothing he could do, because under the Tort

Claims Act his claim would have been barred by the statute of limitations. When he learned it might be possible to obtain relief by a private bill, he immediately pursued the theory and caused a bill to be introduced in the 82d Congress. That legislation was not acted on, and in the 83d Congress Senator Smathers introduced a bill for his relief which was reported by the committee and passed the Senate.

The committee has studied this situation with a great deal of interest and concern, and has come to the conclusion that the claimant is entitled to some relief for his injury. In view of the statement by the nurse that the patient was told that the operation was of a minor nature, when in fact it was a dangerous operation, coupled with the fact that the peritoneal cavity was opened twice accidentally as indicated by the hospital's own record, the committee is led to the conclusion that there was not proper care of the claimant during his operation. This claimant has been reduced to earning a livelihood in any way he can, particularly due to the fact that he has lost his ability to continue as a seaman and apparently has had no education in any other line. He has attempted to reenter some sort of employment in which he has some knowledge, and has failed. This is indicated by two letters, which are hereto attached, from the War Shipping Administration to Senator Claude Pepper, dated November 14, 1942, and Senator Pepper's letter to the claimant, dated November 28, 1942. The committee is of the opinion that this is a case which deserves the sympathetic consideration of Congress. It is felt that the claimant's condition is directly due to the operation in the Marine Hospital, Savannah, Ga., and for that reason the claimant should be given a measure of relief. It is the opinion of the committee that the sum of $15,000 is a reasonable sum to pay to this claimant, and the committee adheres to its former recommendation and recommends the enactment of this legislation, as amended, in that amount.

BAINBRIDGE, GA., *November 23, 1950.*

To Whom It May Concern:

I am writing this in regards to an ex-patient of mine, one Ernest B. Sanders.

I was employed in the United States Marine Hospital as a registered nurse, in Savannah, Ga., in March 1933, when the above-mentioned patient was admitted to the hospital.

This patient's record showed that he had received an injury on the ship on which he was employed, and had been hospitalized in England for 6 months before being brought back to the States. At any rate, when he was admitted to the hospital in Savannah, he had a small area of sloughing tissues, due to an infected left gland. He was scheduled for a minor operation, in which the infected area was to be cleaned out.

A spinal anesthetic was used, which of course left the patient quite aware of what was going on.

During the operation, the anaesthetist made the remark that he wouldn't do that particular operation for $10,000. The surgeon, evidently surprised, looked up at him, and said, "Why?" At that moment the femoral artery was nicked, and of course the patient started hemorrhaging. When that happened the anaesthetist said, "You see, Doctor, that's why."

The bleeding was finally checked by applying a number of hemostats. The patient was then carried back to his bed, and everything possible was done for him, but due to a blood clot, his left leg started gangrening; consequently, it had to be amputated.

I was working in the operating room at the time this happened; in fact, I was assisting with the operation, and even though it did happen more than 16 years ago, I remember every detail of that operation as if it happened yesterday.

I resigned from service in June, after that happened in March, so until a short time ago, I didn't know what finally happened to the patient. Now I learn that he hasn't received any compensation for the loss of his leg.

My object in writing the details of this unfortunate operation is to try and point out the reasons why I think Ernest B. Sanders should be compensated in some way for his loss.

As I previously stated, his records showed that he was injured while he was on duty, which was within itself a minor thing. That's why the operation was scheduled as a minor one, but turned out to be tragic.

I, as a witness to that operation, think he should be compensated a substantial amount for having to be handicapped the rest of his life, losing a leg, when he thought, and was told, he was going to the operating room for a minor operation.

(Signed) RUBYE C. WALKER.

TREASURY DEPARTMENT

OFFICE OF THE MEDICAL OFFICER IN CHARGE

UNITED STATES PUBLIC HEALTH SERVICE

ABSTRACT FROM CLINICAL RECORD

Name: Ernest B. Sanders. Occupation: Seaman.
Age : 25 years. Last vessel: steamship *Shickshinny*.
Furnished hospital care from March 8, 1933 to March 10, 1933.
Furnished outpatient care from ---------- to ----------.
Diagnosis: Sinus (fistula) left groin, postoperative.

History of illness or accident as elicited from patient

Patient stated that on September 8, 1932, while lifting a small boat to its rack on the above vessel, slipped and struck left groin on edge of the punt, slight discomfort at the time, but had to go to bed on the 13th on account of swelling and pain in the groin. Was admitted to hospital in England on the 26th, where the swelling was incised and drained, and discharged from hospital December 13, 1932, but returned thereto on December 23, as the swelling returned. Was discharged from the hospital as cured February 2, 1933, left England February 9, 1933, and saw a physician in Rotterdam as the swelling had returned. Swelling burst March 2, 1933. States he shipped on the steamship *Shickshinny* to get back to the United States as a "workaway," so as to get under the care of the Public Health Service.

Condition of patient upon admission

General physical condition, below par. Blood pressure, 110 systolic, 70 diastolic. Old appendectomy scar. Scars in both groins. Purulent drainage from sinus in left groin. Congested pharynx. Blood count, hemoglobin, 85 percent. Leucocytes, 8,450. L. and S. lymphocytes, 36.5. Polyneucear neutrophiles, 58. Eosinophiles, 2. Basophiles, 1.5. Wassermann, negative. Kline, negative. No abnormal rise of pulse or temperature.

Digest of treatment given

Rest. Proper diet. Tonics. Surgical dressings for groin.

Condition of patient

Discharged "Improved" March 10, 1933, to go to Savannah, Ga., on steamship *Shickshinny*, for prolonged hospitalization in the United States Marine Hospital, at that station.

Remarks: To include available data of previous service admissions, transfers, for discharge of patient

[SEAL]

FRANKLIN F. SAMS,
A. A. Surgeon, USPHS, in charge.

Public Health Service Relief Station, Charleston, S. C., July 3, 1933.

ABSTRACT FROM CLINICAL RECORD

Name: Ernest B. Sanders. Occupation: Seaman.
Age: 25 years. Last vessel: Steamship *Shickshinny*, of Savannah, Ga.
Furnish hospital care from March 11, 1933. Still in hospital.
Diagnosis: Fistula left inguinal, postoperative, cause undetermined. Abscess retroperitoneal left pelvis and left inguinal glands. Embolism left popliteal artery, postoperative.

History of illness or accident as elicited from patient

Present illness: Patient alleges to have first developed trouble with his left groin on September 8, 1932, aboard ship this port. Suddenly groin began swelling like a "kernel" but increased in size becoming more painful after several days out at sea. Was put to bed with icecap to groin until reached England 28th same month; was immediately hospitalized for incision and drainage. After several weeks in hospital developed another area of swelling in same groin, apparently other glands broken down, was put back to bed and another incision and drainage done. And about that time the opposite side became swollen and had to be incised and drained following which it healed without any difficulty, but the left side, which was the original side, has drained ever since. He thinks the beginning of the trouble was due to bumping his groin on ship in this port before sailing September 8, 1932. G. I. negative, except constipated at times. Has lost 20 pounds in weight during present illness, no night sweats, and so forth, system otherwise negative.

Condition of patient upon admission

Physical examination reveals a fairly well nourished, anemic, white male. Age 26 years. Weight 130 pounds, loss of 20 pounds past few months. Height, 5 feet 7 inches. Blood pressure, 94/70. Head-scalp-hair is dark, presents small round scar right occipital region size of half dollar, soft underneath apparent loss of this skull area, not painful or tender. Eyes, negative, except slight pterygium left inner eyeball. Ears and nose negative. Mouth, teeth, and gums fair condition, fairly well kept. Tongue, negative. Tonsils have been removed. Neck: No glands palpable, but bowing of neck to left is noticeable. Chest, flat-shaped, asymmetrical, left side slightly more prominent than right, expansion is equal and fairly good. Lungs: No abnormal breath sounds can be heard. Heart: Apex beat is in midclavicular line at fifth interspace, no abnormal beats can be heard. Abdomen: Vertical scar over right lower quadrant 4 centimeters in length well healed, slightly irregular-shaped, but not indurated or tender. Old healed scar over right groin at site of previous adenectomy, well healed, except small depression in skin slightly undermined, but apparently does not communicate with interior. Left side presents a draining sinus in left groin about midway, admits a small probe several centimeters, white purulent material draining, it is painful and tender. Several old healed scars surrounding this area of groin, sites of previous operations. Liver, kidneys, and spleen not palpable. Back: No lordosis is evident, but a modified kyphosis is apparent with a partial loss of the lumbar concavity. Patient cannot reach the floor by bending forward with his hands, otherwise no apparent stiffness of the spine. Extremities, negative. Lymphatics: Left epitrochlear glands shotty and palpable. Reflexes: Pupils respond sluggish to light and accomodation. Patellar exaggerated. Romberg absent.

Digest of treatment given

March 21, 1933, incision and drainage of left gland of groin. March 27, 1933, amputation of left leg.

Condition of patient undergoing treatment

Improved.

X-ray April 17, 1933: "There is no evidence of disease change of the stump of the left femur. The end of the bone is smooth and round."

Laboratory findings: Wassermann, negative. Urinalysis shows trace of albumin, numerous blood, positive for mucus. Feces negative. Occasional pus, numerous epithelia. Specimen from old wound in left groin shows few pus, numerous organisms mixed. Culture shows mixed organisms, chiefly staphlococci. (No acid-fast bacilli found. Few pus cells, few gram positive cocci (large) March 20, 1933.)

Spinal fluid, negative. N. P. N. 27.5 milligrams per 100 cubic centimeters blood.

White blood count, March 23, 193–15, 500, neutrophiles 77 percent.

Schilling count: Young forms, 1 percent. Band forms, 25 percent. Adult polys, 51 percent. Lymphocytes, 20 percent. Monocytes, 3 percent. March 16, 1933. Pus from groin for guinea pig inoculation. Injected March 16, 1933. Pig died April 18, 1933. Autopsy negative for TB; pig died of pneumonia.

Clot and portion of popliteal artery organizing blood clot filled with numerous pus cells. Diagnosis: Embolus pyogenic. Section on file.

Examination microscopically: Pus cells infiltration nonstaining necrotic areas, but no tubercles. Pathological diagnosis: Superative adenitis (May 12, 1933).

Remarks (to include available data of previous service admissions, transfers or discharge of patient):

This patient was operated on March 21, 1933. Following operation circulation of the left leg was apparently satisfactory, and convalescence was without complication to 7:15, March 24 (Friday). At that exact time he was suddenly seized with terrific pain in his left foot, and the entire foot and ankle immediately became cold and marblelike. The next morning beginning gangrene was evident and amputation became necessary, and was performed March 27, 1933.

Operation March 21, 1933. Findings: Gross, patient previously operated on three times with failure to cure draining sinus in left inguinal region. Upon exploration a mass of caseated inguinal glands extending into the deep inguinal chain with a retro peritoneal abscess containing several ounces of creamy yellow odorless pus. Glands densely adherent, matted together distorting the normal anatomy.

What was done: Scar of previous operation excised. Indurated subcutaneous tissue and superficial glands removed en bloc. The aponeurosis of the external oblique was split and caseated glands about the iliac vessels carefully removed with difficulty. The retro peritoneal abscess was opened widely and pus evacuated. The peritoneal cavity was twice opened accidentally during these procedures, and closed with plain catgut No. 1. In attempting to remove a densely adherent gland the external iliac artery was injured, but promptly clamped without serious hemorrhage. The operation was completed removing all glands from this area. Attempt to suture the divided iliac artery was unsuccessful. A double cigarette drain was placed in the abscess cavity and the wound packed with vaseline gauze, and clamps left on the divided vessel. Plain No. 1 for ties. Wound left wide open. The left leg was wrapped in cotton elevated, and kept warm with artificial light. Postoperative condition fair.

Operation March 27, 1933: Findings. Gross, dry gangrene of the left leg, extending up to the tibial tubercle, presumably the result of arterial embolus lodging in the bifocation of the popliteal artery 7:15 p. m., Friday, March 24. Peripheral circulation apparently good above the knee.

What was done: Tendo plastic amputation after Kirk of the left leg just above the epicondyle of the femur. Popliteal artery doubly ligated with plain No. 1; popliteal vein with the same and superficial ties with plain No. 1. The quadraceps tendon was sutured to the fossa of the leg with interrupted Chromic No. 1. Skin closed with interrupted silkworm. Hard rubber tube through and through for drainage.

[SEAL]

C. Y. BAILEY,
Surgeon (R), USPHS, in Charge.

United States Marine Hospital, Savannah, Ga.

ABSTRACT FROM CLINICAL RECORD

Name: Sanders, Ernest. Occupation: Merchant seaman.
Age: 27 years. Last vessel: Steamship *Shickshinny.*
Furnished hospital care from May 21, 1934, to June 23, 1934.
Diagnosis: Amputation stump, left painful. Pterygium, bilateral. Calculus, dental. Spur on left septum.

History of illness or accident as elicited from patient

Chief complaint: Tenderness of stump.

This patient was treated in this hospital March 11 to July 2, 1933. Had amputation left lower extremity upper third thigh. Returns with tenderness over end of stump which he states precludes use of artificial limb.

Condition of patient upon admission

General appearance: Reveals a fairly well nourished and developed white male, 27 years old, who does not seem to be acutely ill. Weight, 112 pounds. Normal weight, 147 pounds. Height, 66 inches. Head: Color of hair, sandy. Texture,

medium. Eyes: Color, brown. Pupils, round, regular react to L. and A. Sclera, pterygium bilat. Conjunctivae, negative. Ears, nose, negative. Mouth: Tongue, negative. Teeth and throat, negative. Neck: Pulsation, negative. Swelling, negative. Thorax: Flat-shaped, symmetrical, expands equally. Heart: Rate, 80. Apex impulse, in MCL at 5th ICS. Sound, normal. Murmurs, none. Thrills, none. Aortic second sound, negative. Blood pressure: Systolic, 95; diastolic, 70. Aorta is not palpable in jugular notch. Peripheral vessels, negative. Varicosities, negative. Lungs, negative. Abdomen: Large irregular-shaped healed scarring over left inguinal region, small scarring over right inguinal region. Genitalia, normal male. Rectal, negative. Glands: Cervical, negative. Epitrochlear, negative. Axillary, negative. Inguinal, negative. Extremities: Left lower extremity missing at uppoer third thigh—slight tenderness elicited on pressure over end of stump, has only thin pad covering end of bone which probably accounts for tenderness complained of. Spine, negative. Reflexes: Patellar, present. Babinski, negative. Abdominal, negative. Tremors, none. Romberg, unable to obtain. Ankle, clonus, negative. Cremasteric, negative. Gait, negative. Skin, negative. Muscles, soft and flabby, small. Nerves, negative.

Remarks: Amputation stump, painful, left. Pterygium eyes bilateral.

Digest of treatment given

Operation: Excision spur amputated stump, left femur. Routine care, and postoperative treatment.

Condition of patient

Recovered from amputation.

Laboratory findings: Urinalysis: Reaction, acid. Albumin trace, and sugar, negative. Sp. Gr. 1022. Bacteria, positive. Epithelia, occasional. Mucus, positive. Pus, occasional. Wassermann and Kahn, negative. Feces, negative. Blood: Number of red corpuscles, 4,750,000. Number of white corpuscles, 5,750. Hemoglobin percent, 70. Differential count: Small mononuclears, 36 percent. Large mononuclears, 2 percent. Polymorphonuclears, 2; neutrophiles, 62 percent.

X-ray findings: The stump of the left femur has somewhat ragged edges, with a sharp spur growing upward and posteriorly.

Operative record: Condition: Patient complained of painful amputation stump, the result of removal of left leg through the lower third of the femur. The bone was covered with an excellent pad of fat with a soft pliable scar but itself was rough with numerous spicules and one large spur under the posterior surface of the bone.

Remarks: Operation, June 4, 1934. The scar in the skin was carefully excised and a careful dissection of the stump was done, uncovering the bone layer by layer. The spicules of bone were carefully removed and the band of periosteum 1 centimeter in width was removed from the terminal portion of the bone and the bone itself smoothed with a file, spur from the lines aspera excised and a very careful layer by layer closure of the soft tissue was done. The soft tissues about the bone were flooded with 1 percent alcohol solution. The skin was closed with plain 1 for ties and muscle. Dermal for skin. No drains. Anesthetic, novocaine infiltration, 2 percent.

Left hospital, absence without leave, 1 day.

Specialists' reports: Eyes, pterygium bilateral, nonsurgical. Ears, negative. Nose, spur on left septum. Throat, negative. By Dr. Maner.

Patient complains of pain in an old amputated stump, the pain is generalized, distributed over the end of the bone. X-ray examination shows some roughening of the bone and with spur formation on one side. It is doubtful that the spur is producing pain complained of. It is also doubtful that reamputation will prove of any benefit as the leg has twice been amputated, and previous to the original operation there was a long standing infection of the inguinal region which is probably accounting for some of the distrubances in the terminal nerves, and also some of the osteitis now shown. The skin flap is satisfactory, and subcutaneous fat pads are as satisfactory as could possibly be expected. Would advise removal of the bony spur with as little disturbance of the previous scar as possible. By Dr. Quattlebaum.

[SEAL]

J. P. EBERHARDT,
Surgeon, USPHS, in charge.

United States Marine Hospital, Savannah, Ga.

ABSTRACT FROM CLINICAL RECORD

Name: Ernest B. Sanders. Occupation: Seaman.
Date of birth: March 22, 1907.
Age: — years. Last vessel: Steamship *Shickshinny*.
Furnished hospital care from March 11 to July 2, 1933; July 30 to October 8 1933; May 21 to June 23, 1934.

Diagnosis

March 11 to July 2, 1933: (1) fistula, left inguinal, postoperative, cause undetermined; (2) abscess retroperitoneal left pelvis and left inguinal glands; (3) embolism left popliteal artery postoperative.

July 30 to October 8, 1933: (1) amputation stump, femur, left junction middle and lower third; (2) acne vulgaris, shoulders, arms, and body; (3) pterygium, bilateral; (4) caries, dental.

Condition of patient upon admission

May 21 to June 23, 1934: (1) amputation stump, painful; (2) pterygium, bilateral; (3) calculus, dental; (4) spur on left septum.

See attached copies of narrative summaries covering each period of hospitalization.

United States Marine Hospital, Savannah, Ga.
[SEAL]

C. H. DABBS,
Surgeon, Acting Chief of Surgery.

NARRATIVE SUMMARY

Patient: Sanders, Ernest B., United States Marine Hospital, Savannah, Ga.
Identification No. A. S.
Register No. 11159.
Ward No. Surgery.
Date of admission, March 11, 1933; date of discharge, July 2, 1933.

This 25-year-old white male seaman was admitted to the United States Marine Hospital, Savannah, Ga., on March 11, 1933, at 9:45 a. m., with a chief complaint of fistula, postoperative, left groin. Patient alleges to have first developed trouble with his left groin on September 8, 1932, aboard ship, this port. Suddenly the groin began swelling like a "kernel" but increased in size, becoming more painful after several days out at sea. He was put to bed with an icecap to groin until they reached England September 28, 1932. He was immediately hospitalized for incision and drainage. After several weeks in the hospital another area of swelling in the same groin, apparently other glands broken down, was put to bed and another incision was done. At about that time the opposite side became swollen and had to be incised and drained following which it healed without any difficulty. The left side, which was the original side, has drained ever since. He thinks the beginning of the trouble was due to bumping his groin on ship in this port before sailing on September 8, 1932.

Physical examination on admission revealed a fairly well nourished, anemic, white male, 25 years old, who did not seem to be acutely ill. He weighed 130 pounds, loss of 20 pounds in the past few months. Blood pressure 94/70. Examination of the abdomen: Vertical scar over right lower quadrant, 4 centimeters in length, well healed, slightly irregular shaped but not indurated or tender. Old healed scar over right groin at site of previous adenectomy, well healed except small depression in skin, slightly undermined, but apparently does not communicate with interior. The left side presents a draining sinus in left groin about midway, admits a small probe several centimeters, white purulent material draining. It is painful and tender; several old healed scars surrounding this area of groin, sites of previous operations. The remainder of physical examination was essentially negative. Temperature on admission 97 degrees.

Admission laboratory data: Kahn, negative; Kolmer and Wassermann, negative.

Urinalysis: Specific gravity, 1.019; sugar, negative; albumin, negative; color, amber; reaction, acid. Stool examination, negative for ova. Culture from wound left groin showed mixed organisms, chiefly staphylocci; acid-fast stains showed no acid-fast bacilli seen. Spinal fluid mastic curve, 100000; cell count, 1 cell; globulin, faint trace; albumin, trace; Kahn, Q. N. S.; N. P. N., 27.5 milligram percent.

On March 14, 1933, the sinus was probed with a stick of silver nitrate; March 16, 1933, specimen of pus was injected into a guinea pig. On March 18, 1933, he was seen with Dr. Julian K. Quattelbaum, who advised excision of glands,

He was redressed daily until March 21, 1933, when operation was carried out. Upon exploration a mass of caseated inguinal glands extending into the deep inguinal chain with a retroperitoneal abscess, containing several ounces of creamy yellow odorless pus, was found. The glands were densely adherent, matted together, distorting normal anatomy. The indurated subcutaneous tissue and superficial glands were removed en bloc. The caseated glands about the inguinal ring were removed. The retroperitoneal abscess was opened widely and pus evacuated. A double cigarette drain was placed in the abscess cavity and the wound packed with vaseline gauze.

Abstracts from progress notes as follows:

March 23, 1933.—Circulation in foot good. Voiding voluntarily.

March 24, 1933.—Wound redressed.

March 25, 1933.—Last night about 7 p. m. he had sudden pain in left leg and toes became ischemic. No circulation in foot or ankle today and some discoloration. Evidently an embolus catching at about the bifurcation of the popliteal artery.

March 27, 1933.—There was dry gangrene of the left leg extending up to the tibial tubercle. Peripheral circulation apparently good above the knee. A tendo plastic amputation after Kirk was carried out on the left leg just about the epicondyle of the femur. Popliteal artery was doubly ligated with plain No. 1. Examination showed embolus at bifurcation of popliteal artery.

March 28, 1933.—Wound of groin redressed, drains removed. Repacked with vaseline gauze.

April 3, 1933.—Redressed amputation stump, clean; large wound in groin granulating slowly.

April 8, 1933.—Amputation stump redressed, sutures removed.

April 15, 1933.—Still complains of severe pain in stump. Intermittent traction to skin of stump.

April 22, 1933.—Redressed daily stump and groin; no discharge in groin.

April 26, 1933.—Wound in groin healing nicely. Wound on stump still open on outer under surface about 1 inch in diameter. Daily dressing and traction.

Secondary amputation of the left leg was carried out May 15, 1933 because of sloughing of the soft tissues and exposure of the end of the femur. By May 31, 1933 the wound of the reamputation was healed by first intention. It was not tender and dressings were discontinued.

X-ray of the chest and lumbar spine were negative for bone disease.

By June 17, 1933, the wound in the groin was healed and only superficially tender over the scar. There was no deep tenderness on palpation of the left lower quadrant. The patient was gaining weight and condition was improving. On July 2, 1933, he was discharged to outpatient treatment to return at monthly intervals for observation. He was to wear an elastic shrinking bandage to the stump.

Diagnosis: (1) Fistula, left inguinal, postoperative, cause undetermined; (2) abscess retroperitoneal left pelvis and left inguinal glands; (3) embolism left popliteal artery postoperative.

NARRATIVE SUMMARY

Patient: Sanders, Ernest B.. United States Marine Hospital, Savannah, Ga.
Identification No. A. S.
Register No. 11479.
Ward No. Surgery.
Date of admission, July 30, 1933; date of discharge, October 8, 1933.

This 25-year-old white male seaman was readmitted to the United States Marine Hosptial, Savannah, Ga., on July 30, 1933, at 2 a. m. Patient had had an adenectomy—superficial, and deep inguinal and femoral glands on the left side in March 1933. Following the operation gangrene developed in the left leg, necessitating amputation 2 inches above the knee. The stump did not heal and amputation above at the junction of the lower middle third of the femur was done on May 13, 1933. This healed firmly and now 2½ months later he returns for artificial limb.

Physical examination on admission revealed a well-developed but undernourished white male with the left leg amputated above the knee. The abdomen was soft, flat, and thin walled. There was a small McBurney appendectomy scar; there were bilateral inguinal scars. Extremities: Amputation of the left leg at the junction of middle and lower femur, well-healed trunk and stump.

Admission laboratory data: Urinalysis: Albumin negative; sugar negative; specific gravity, 1.028; coagulation, 5½ minutes. Red blood count, 4,990,000; hemoglobin, 70 percent; white cells, 6,900.

August 2, 1933.—Artificial limb was ordered. Tight binding to stump continued.

August 5, 1933.—Up and about on crutches; no pain in stump.

August 18, 1933.—Measured for artificial limb today.

August 26, 1933.—A Frei test for bubo was positive, presumably indicating that in the past he has had such an affliction.

September 2, 1933.—Awaiting artificial limb which has been ordered.

September 5, 1933.—Up and about on crutches. Eats and sleeps well.

September 20, 1933.—Artificial leg supplied today.

September 25, 1933.—Still using leg, complains of some tenderness over stump. Sent to physiotherapy for baking and massage of stump.

October 7, 1933.—To be discharged in a. m.; maximum hospitalization at this time but to return within 60 days for observation of stump and to report condition of success in using artificial leg. Patient violated serious hospital rule yesterday by obtaining another patient's clothing and going out without permission.

Diagnosis: (1) Amputation stump, femur, left junction middle and lower third; (2) acne vulgaris, shoulders, arms and body; (3) pterygium, bilateral; (4) caries, dental.

NARRATIVE SUMMARY

Patient: Sanders, Ernest B., United States Marine Hospital, Savannah, Ga.
Identification No. A. S.
Register No. 12704.
Ward No. Surgical.
Date of admission, May 21, 1934; date of discharge, June 23, 1934.

This 27-year-old white male seaman was admitted to the hospital on May 21, 1934, at 9:20 a. m. complaining of tenderness in the stump. History of present illness (see previous record March 11 to July 2, 1933). This patient treated in this hospital above dates. Had amputation of left lower extremity upper third of the thigh; returns with tenderness over end of stump which he states precludes use of artificial limb.

Physical examination revealed a large irregular shaped, healed scar over left inguinal region, and small scarring over right inguinal region. Left lower extremity missing at upper third of thigh; slight tenderness elicited on pressure over end of stump.

Admission laboratory data were within normal limits.

X-ray, May 21, 1934: The stump of the left femur has somewhat ragged edges, with a sharp spur growing upward and posteriorly. On May 25, 1934, a spur from the linea aspera was excised and a very careful layer-by-layer closure of the soft tissues was done. On June 5, 1934, the sutures were removed with primary healing. On June 21, 1934, about ward with crutches; allowed out on pass. Does not complain; stump has entirely healed; no pain or tenderness of stump. June 22, 1934, he went out on a pass yesterday; failed to return at expiration of pass 9 p. m. Returned this a. m.; had no satisfactory explanation to offer. Further hospitalization not considered necessary. Discharged June 23, 1934.

Diagnosis: (1) Amputation stump, painful; (2) pterygium, bilateral; (3) calculus, dental; (4) spur on left septum.

MAY 23, 1933.

The SURGEON GENERAL,
United States Public Health Service,
Washington, D. C.

SIR: For the Bureau's information I have the honor to submit the following report on Ernest B. Sanders, seaman, age 25, who was admitted to this hospital on March 11, 1933:

History of present illness: Patient alleges to have first developed trouble with his left groin on September 8, 1932, aboard ship this port. Suddenly groin began swelling like a "kernel" but increased in size, becoming more painful after several days out at sea. He was put to bed with icecap to groin until reached England on the 28th of same month; was immediately hospitalized for incision and drainage. After several weeks in hospital developed another area of swelling in same groin, apparently other glands broken down, was put back to bed and another incision and drainage done. About that time the opposite side became swollen and had to be incised and drained, following which it healed without any

difficulty, but the left side, which was the original side, has drained ever since. He thinks the beginning of the trouble was due to bumping his groin on ship in this port before sailing September 8, 1932. G. I. negative, except constipated at times. Has lost 20 pounds in weight during present illness, no night sweats, etc. System otherwise negative.

Physical examination reveals a fairly well nourished, anemic, white male. Age 25 years. Weight 130 pounds, loss of 20 pounds past few months. Height 5 feet 7 inches. Blood pressure 94/70. Head-scalp-hair is dark, presents small round scar right occipital region size of half dollar, soft underneath, apparent loss of this skull area, not painful or tender. Eyes negative, except slight pterygium left inner eyeball. Ears and nose negative. Teeth and gums in fair condition, fairly well kept. Tongue negative. Tonsils have been removed. Neck—no glands palpable, but bowing of neck to left is noticeable. Chest is flat-shaped, asymetrical, left side slightly more prominent than right, expansion is equal and fairly good. Lungs—no abnormal breath sounds can be heard. Heart—apex beat is in midclavicular line at fifth interspace, no abnormal beats can be heard. Abdomen—vertical scar over right lower quadrant 4 centimeters in length, well healed, slightly irregular shaped, but not indurated or tender. Old healed scar over right groin at site of previous adenectomy, well healed, except small depression in skin slightly undermined, but apparently does not communicate with interior. Left side presents a draining sinus in left groin about midway, admits a small probe several centimeters, white purulent material draining, it is painful and tender. Several old healed scars surrounding this area of groin, sites of previous operations. Liver, kidneys, and spleen not palpable. Back: No lordosis is evident, but a modified kyphosis is apparent with a partial loss of the lumbar concavity. Patient cannot reach the floor by bending forward with his hands, otherwise no apparent stiffness of the spine. Extremities negative. Lymphatics, left epitrochlear glands shotty and palpable. Reflexes: Pupils respond sluggish to light and accommodation. Patellar exaggerated. Romberg absent.

Laboratory findings: Urinalysis shows trace of albumin, numerous blood, mucus, occasional pus, and numerous epithelia. Feces negative. Specimen from old wound in left groin shows few pus, numerous organisms mixed. Culture shows mixed organisms, chiefly staphylococci. No acid-fast bacilli found. Few pus cells. Few Gram-positive cocci (large). Spinal fluid negative. NPN, 27.5 mg. per 100 cc. blood. White blood count March 23, 1933, 15,500, neutrophiles, 77 percent Schilling count. Young forms, 1 percent. Bank forms, 25 percent. Adult polys, 51 percent. Lymphocytes, 20 percent. Monocytes, 3 percent, March 16, 1933, pus from groin for guinea pig inoculation. Injected March 16, 1933. Pig died April 18, 1933. Autopsy negative for tuberculosis. Pig died of pneumonia. Pathological examination of glands shows pus cells infiltration nonstaining necrotic areas, but no tubercles. Pathological diagnosis: Suppurative adenitis (May 12, 1933).

Operation March 21, 1933. Findings: Gross—patient previously operated on three times with failure to cure draining sinus in left inguinal region. Upon exploration a mass of caseated inguinal glands extended into the deep inguinal chain with a retroperitoneal abscess containing several ounces of creamy yellow odorless pus. Glands densely adherent matted together distorting the normal anatomy. What was done: Scar of previous operation excised. Indurated subcutaneous tissue and superficial glands removed en bloc. The aponeurosis of the external oblique was split and caseated glands about the iliac vessels carefully removed with difficulty. The retroperitoneal bascess was opened widely and pus evacuated. The peritoneal cavity was twice opened accidentally during these procedures, and closed with plain catgut No. 1. In attempting to remove a densely adherent gland the external iliac artery was injured, but promptly clamped without serious hemorrhage. The operation was completed removing all glands from this area. Attempt to suture the divided iliac artery was unsuccessful. A double cigarette drain was placed in the abscess cavity and the wound packed with vaseline, gauze, and clamps left on the divided vessel. Plain No. 1, for ties. Wound left side open. The left leg was wrapped in cotton, elevated, and kept warm with artificial light. Post operative condition fair.

Operation March 27, 1933. Findings: Gross—dry gangrene of the left leg, extending up to the tibial tubercle, presumably the result of arterial embolus lodging in the bifocation of the popliteal artery 7:15 p. m. Friday, March 24. Peripheral circulation apparently good above the knee. What was done: Tendoplastic amputation after Kirk of the left leg just above the epicondyle of the femur. Popliteal artery doubly ligated with plain No. 1. Popliteal vein with the same and superficial ties with plain No. 1. The quadraceps tendon was sutured to

the fossa of the leg with interrupted chromic No. 1. Skin closed with interrupted silkworm. Hard-rubber tube through and through for drainage.

Following the operation March 21, 1933, circulation of the left leg was apparently satisfactory, and convalescence was without complication to 7:15 March 24 (Friday). At that exact time he was suddenly seized with terrific pain in his left foot, and the entire foot and ankle immediately became cold and marblelike. The next morning beginning gangrene was evident and amputation became necessary and was performed March 27, 1933. Report by pathologist: Organizing blood clot filled with numerous pus cells found in the lower portion of the popliteal artery. Diagnosis: Pyogenic embolus.

Operation, May 15, 1933, reamputation of stump of left leg. Findings: Gross—patient previously operated on and left leg amputated just above the knee with sloughing of the soft tissues and exposure of the end of the femur. What was done: After carefully cleansing and preparing the skin the stump of the left leg was amputated, excising approximately 4 inches of the left femur. Bleeders caught and ligated as encountered. Soft tissues closed with No. 1 plain interrupted. Interrupted dermal for skin. One Penrose drain through the stump.

May 23 wound of reamputated stump is healing by first intention. Area of incision and drainage of abscess left groin has granulations level with skin and is over one-half healed, area yet to be epithelized about one-half by one-half inch. Clean granulations; no drainage. General condition of patient good.

Respectfully,

JNO. T. BURKHALTER,
Medical Director, Medical Officer in Charge.

TREASURY DEPARTMENT,
PUBLIC HEALTH SERVICE,
Washington, June 1, 1933.

MEDICAL OFFICER IN CHARGE,
United States Marine Hospital,
York and Abercorn Streets, Savannah, Ga.

SIR: Referring to station letter dated May 23, 1933, information is requested as to whether you believe that a formal investigation should be made to determine whether the officer or officers are to be criticized for allowing the peritoneal cavity to be twice opened and the external iliac artery injured when performing an operation on Ernest B. Sanders, seaman, on March 21, 1933, for the removal of glands in the inguinal region.

In your reply the name of the operating surgeon should be furnished with such comment as you believe pertinent in view of the fact that it was necessary to amputate the left leg on March 27 and reamputate the stump on May 15.

Respectfully,

H. S. CUMMING, *Surgeon General.*

MARINE HOSPITAL,
Savannah, Ga., June 7, 1933.

The SURGEON GENERAL,
United States Public Health Service,
Washington, D. C.

SIR: I have the honor to acknowledge receipt of Bureau letter dated June 1, 1933, requesting an expression of my opinion as to whether a formal investigation should be made to determine whether the officer or officers are to be criticized for allowing the peritoneal cavity to be twice opened and the external iliac artery injured when performing an operation on Ernest B. Sanders, seaman, on March 21, 1933, for the removal of glands in the inguinal region.

In reply the Bureau is advised that a complete and accurate report of all of the facts pertaining to the case of Ernest B. Sanders was furnished in my letter of May 23, 1933. In my opinion the injury to the external iliac artery was an unfortunate surgical accident likely to occur to the most careful and skillful operator, however, I would prefer and recommend that a formal investigation be made.

Attending Specialist Julian K. Quattlebaum operated on Sanders on March 21, 1933, also on March 27, 1933, and on May 15, 1933. In amputating the left leg on March 27, 1933, an attempt was made to save as much of the limb as possible

and in my opinion the flap contracted more than was expected and for this reason a reamputation of the stump was done on May 15, 1933, which healed by first intention and Sanders now has a good stump.

Respectfully,

JNO. T. BURKHALTER,
Medical Director, Medical Officer in Charge.

SURGEON S. L. CHRISTIAN'S REPORT OF INVESTIGATION OF CASE OF ERNEST B. SANDERS AT MARINE HOSPITAL, SAVANNAH, GA., DATED JUNE 22, 1933

UNITED STATES PUBLIC HEALTH SERVICE,
Washington, D. C., June 24, 1933.

(First endorsement)

Respectfully forwarded to the Surgeon General for his information and file. This investigation was made at the suggestion of the medical officer in charge of the Marine Hospital, Savannah, Ga. No incompetence, poor judgment, or lack of care were found and no further action is indicated.

F. C. SMITH,
Assistant Surgeon General, Hospital Division.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, September 28, 1951.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 1902) for the relief of Ernest B. Sanders.

The bill would provide for payment of the sum of $25,000 to Ernest B. Sanders, of Miami, Fla., in full and final settlement of all claims against the United States for personal injuries, pain and suffering, permanent disability and loss of earnings sustained by him and resulting from an accidental and improper division of or injury to an artery while he was a patient in the United States Marine Hospital at Savannah, Ga., during March of 1933.

In compliance with your request, a report was obtained from the Federal Security Agency concerning this legislation. That report, which is enclosed, is accompanied by copies of a report made by the medical officer in charge of the Savannah Marine Hospital at the time claimant was hospitalized, as well as copies of correspondence relating thereto. According to the report, claimant first developed trouole with his left groin on September 8, 1932, aboard ship at Savannah. His symptoms became more painful after several days out at sea, and upon arrival in England he was immediately hospitalized for incision and drainage. After several weeks in the hospital, he developed another area of swelling in the same groin and another incision and drainage was done. At the same time the opposite side became swollen and had to be incised and drained, following which it healed without any difficulty, but the left side which was the original side continued to drain. Claimant believes that the beginning of the trouble was due to bumping his groin while on board ship in the port of Savannah before sailing on September 8, 1932.

Subsequent to the three operations in England, claimant was operated on in the Marine Hospital, Savannah, Ga., on March 21, 1933, in an effort to cure the draining sinus in the left inguinal region. During the course of this operation the peritoneal cavity was twice opened accidentally and closed. During the same operation the external iliac artery was injured but was promptly clamped without serious hemorrhage. The attempt to suture the divided iliac artery was unsuccessful. Following this operation gangrene of the left leg developed and it was amputated on March 27, 1933. During this operation apparently an attempt was made to save as much of the limb as possible, but the flap contracted more than was expected which made a reamputation of the stump necessary.

According to a letter from the medical officer in charge to the Surgeon General, written shortly after the last operation in 1933, it was the opinion of such medical officer that the injury to the external artery was an unfortunate surgical accident

likely to occur to the most careful and skillful operator. In a memorandum which accompanied a report of the investigation made into this matter by a surgeon at the marine hospital, the statement was made that no incompetence, poor judgment, or lack of care was found as a result of the investigation.

The Federal Security Agency has advised that it has made an intensive search of its records and those in the custody of National Archives, but that this report of the investigation cannot be found. It states, however, that in view of the findings contained in the record of this case, it is not recommended that the bill be enacted by the Congress.

The act upon which this claim is based occurred over 18 years ago and there is nothing in the report of the Federal Security Agency to indicate why claimant allowed such an inordinate period of time to elapse before taking any steps with regard to his claim. Not only is there an absence of any record of extenuating circumstances which would excuse claimant's laches in this respect, but there is also an absence of any evidence indicating negligence or malpractice on the part of the Government medical personnel concerned. The degree of care and skill to be expected of a physician is that "ordinarily exercised by the profession in his own or similar localities" (3 Cooley, Torts, sec. 473 (4th ed. 1932)). There is nothing to indicate that the degree of professional skill exercised by Government doctors in this case fell short of this standard. Accordingly, the Department of Justice concurs in the views of the Federal Security Agency.

The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Yours sincerely,

A. DEVITT VANECH, *Deputy Attorney General.*

FEDERAL SECURITY AGENCY,
Washington, August 30, 1951.

The Honorable ATTORNEY GENERAL,
Department of Justice, Washington 25, D. C.

DEAR MR. ATTORNEY GENERAL: This letter is in response to Mr. Ford's request of August 8, 1951, for a report on S. 1902, a bill for the relief of Ernest B. Sanders.

The bill would provide for the payment of $25,000 from the Treasury to Ernest B. Sanders, of Miami, Fla., for personal injuries, pain and suffering, permanent disability, and loss of earnings sustained by him and resulting from an accidental and improper division of or injury to an artery while he was a patient in the United States marine hospital (now known as the United States Public Health Service Hospital) at Savannah, Ga., during March 1933.

There are enclosed for your information copies of the following correspondence from the clinical record file of Mr. Sanders:

1. Detailed report dated May 23, 1933, addressed to the Surgeon General from Medical Director John T. Burkhalter, who was the medical officer in charge of the Savannah Marine Hospital at the time Mr. Sanders was hospitalized in 1933.

2. Letter date June 1, 1953, from Surgeon General H. S. Cummings to the medical officer in charge requesting information as to whether a formal investigation should be made.

3. Reply dated June 7, 1933, from the medical officer in charge to the Surgeon General stating that it was an unfortunate surgical incident likely to occur to the most careful and skillful operator, but recommended that a formal investigation be made.

4. First endorsement dated June 24, 1933, by F. C. Smith, Assistant Surgeon General, Hospital Division, forwarding a report of investigation dated June 22, 1933, made by Surgeon S. L. Christian, to the Surgeon General. The endorsement states that "no incompetence, poor judgment, or lack of care were found and no further action is indicated."

The Public Health Service has made an intensive search of its records and of those in the custody of National Archives; however, the report of investigation made by Surgeon S. L. Christian cannot be found.

Dr. Julian K. Quattlebaum, who operated on Mr. Sanders on March 21, 1933, also on March 27, 1933, and on May 13, 1933, is still acting as surgical consultant for the United States Public Health Service Hospital at Savannah, Ga. Dr. John T. Burkhalter, who was medical officer in charge at the time, has retired from the Public Health Service and is now living in Savannah, Ga. The clinical records of Mr. Sanders are presently in the custody of Public Health Service

Headquarters here in Washington, D. C., and can be made available to you on request.

In view of the findings contained in the record of this case, it is not recommended that the bill be enacted by the Congress.

Sincerely yours,

JOHN L. THURSTON, *Acting Administrator.*

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
November 28, 1942.

Mr. ERNEST B. SANDERS,
Bridgeview Hotel, Springfield, Mass.

DEAR MR. SANDERS: I regret that the enclosed letter, which I send as information to you on your case, is not more favorable, and that I could not be of more help to you.

With kindest regards and best wishes, I remain,

Very sincerely yours,

CLAUDE PEPPER.

WAR SHIPPING ADMINISTRATION,
DIVISION OF TRAINING,
Washington, November 14, 1942.

Hon. CLAUDE PEPPER,
United States Senate, Washington, D. C.

MY DEAR SENATOR PEPPER: Reference is made to your letter of October 31, 1942, addressed to the Merchant Marine Section of the War Shipping Administration, enclosing letter from Mr. Ernest B. Sanders, of 18 Wight Place, Bridgeview Hotel, Springfield, Mass.

I am entirely sympathetic with Mr. Sanders' desire to serve in the merchant marine, but during the present emergency it is necessary that all ships be manned with physically fit men in the event they encounter the enemy.

Regarding Mr. Sanders' employment aboard ship as a radio operator, it is necessary that all radio operators aboard ship possess a radiotelegraph operator's license. This Division conducts a resident radio school in Boston, Mass. To be eligible for enrollment, however, applicants must be eligible for enlistment in class M–1 of the United States Naval Reserve and Mr. Sanders would be unable to meet their established physical standards.

Your constituent's interest and patriotic offer are deeply appreciated and it is regretted that we cannot be of any assistance.

His original letter to you is returned for your records.

Sincerely yours,

TELFAIR KNIGHT,
Director, Division of Training.

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